89-248

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

No. _____

DONALD E. TYLER, M.D.

Petitioner

v.

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AND PART I OF APPENDIX A

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264 pp

QUESTIONS PRESENTED

1. Has the federal court of appeals sanctioned, condoned, and ratified such extreme departure from accepted and usual course of judicial proceedings by the U.S. District Court for the District of Oregon as to call for exercise of this Court's power of supervision?

2. Does this Court approve, condone, and ratify an **injunction based upon perjury** by a lawyer-plaintiff, **conspiracy to commit perjury and obstruct justice** by all plaintiffs (all of whom are lawyers), and the **joinder and participation in conspiracy to obstruct justice by judges of the U.S. District Court and by justices of the Circuit Court of Appeals** for the Ninth Circuit?

3. Does this Court approve, condone, and ratify the district court and Court of Appeals acting in conflict with all pertinent Constitutional provisions,

statutes, rules of procedure, legal precedence, and precedence as to use of equity powers?

4. Inasmuch as the decisions, order of injunction, and orders of sanctions by the U.S. District Court for the District of Oregon and the U.S. Circuit Court of Appeals are in complete disregard and in gross conflict with applicable decisions of this Court and as to federal questions, will this Court review by way of writ of certiorari and correct?

5. Is the repeated fraudulent, illegal use of federal courts to deny the petitioner his right of trial by jury in state courts as provided by common law and state constitution, and the taking of his money under guise of costs, double costs, and attorney fees condoned, approved, and ratified by this Court?

6. Has the petitioner been denied his right of trial by jury, and prospectively,

in violation of the 1st, 5th and 7th Amendments of the U.S. Constitution?

7. Has the property of the petitioner been taken in violation of the First Amendment of the U.S. Constitution and without due process of law in violation of the Fifth Amendment under color of rules of procedure, and are FRCP 11, FRAP 38, and 28 USC § 1912 violative of the U.S. Constitution?

8. Did the U.S. District Court for the District of Oregon act without jurisdiction and did the U.S. Court of Appeals act without jurisdiction except as to supervisory power to order dismissal of the suit, dissolution of the injunction, and vacation of order of sanctions by the U.S. District Court?

9. Inasmuch as Judge Owen Panner of the U.S. District Court was assigned the case by Judge James Redden who was a named coconspirator in the case subject to being

stopped by the injunction and Judge Panner acted to the injury and prejudice of the petitioner in gross disregard and violation of all pertinent rules of procedure, statutes, Constitutional provisions, legal precedence, established principles of equity, and pronouncements of this Supreme Court, was the petitioner denied his right to an impartial judge in violation of the Fifth Amendment of the U.S. Constitution?

10. Was the petitioner denied his right to fair trial and without due process of law in violation of the Fifth Amendment of the U.S. Constitution?

11. Does this Supreme Court approve, condone, and ratify fraudulent trial and proceedings and violations of decisions of this Court including but not limited to: (1) lack of legal jurisdiction, (2) lack of jurisdiction of the judge, and denial of impartial judge, (3) lack of equity

jurisdiction, without allegations or showing of standing, inadequate remedy at law, and actual or threatened irreparable injury, (4) injunction issued in violation of 28 USC §2283, (5) injunction to aid persons lacking standing, (6) false fraudulent allegations in the complaint, including but not limited to false fraudulent allegations concerning standing and fraudulent allegations to claim jurisdiction based upon res judicata exception to 28 USC §2283, (7) trial held in violation of FRCP Rule 7 before answer was filed and when the case was not at issue, (8) decision and injunction knowingly based upon perjury and conspiracy to commit perjury by the plaintiffs all of whom are attorneys, (9) decision and injunction not supported by pleadings, not supported by evidence, and contrary to all evidence, (10) complete disregard of rules of evidence including

unauthorized taking of judicial notice of proceedings in a case not before the court, (11) application of bar by res judicata and collateral estoppel without the complete records of the cases relied upon in evidence, (12) application of bar by res judicata and collateral estoppel as to judgments of cases in which fraud and collusion going to jurisdiction and judgment were alleged and shown by the petitioner, (13) rulings by the U.S. District Court as to the merits of a case pending in an Oregon state court and as to merits of prior cases in Colorado state courts thereby acting as an appellate court of the state courts completely without jurisdiction?

28 USC §2403 may be applicable and COPY OF THIS PETITION HAS BEEN MAILED TO THE SOLICITOR GENERAL OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

DONALD E. TYLER, M.D.,

Petitioner

v.

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Donald E. Tyler, M.D., petitioner herein, petitions that a writ of certiorari issue to review the judgment

of the Unites States Court of Appeals for the Ninth Circuit entered in the above entitled case on July 3, 1989.

OPINIONS BELOW

Decisions, opinions, and judgments are in **APPENDIX A**, infra: **U.S. COURT OF APPEALS** "Memorandum" (Order affirming trial court and order of sanctions as to the appeal), p. A-1; **TRIAL COURT** recusal of Judge Redden and assignment of Judge Panner, p. A-7; denial of motion to disqualify Judge Panner, p. A-8; denial of motion to dismiss for lack of jurisdiction, p. A-12; Pretrial conference p. A-18; Injunction and judgment, p. A-20; Findings of fact, conclusions of law and order granting permanent injunction, p. A-25; Order of Rule 11 sanctions, p. A-43.

JURISDICTION OF THIS COURT

Jurisdiction of this case in the U.S. District Court was fraudulently based upon color of 28 USC §2283. Jurisdiction of

this Supreme Court is based upon Article III and claim of violations of the 1st, 5th, and 7th Amendments of the U.S. Constitution and violation of 28 USC §2283 and other federal statutes. Appeal was based upon FRAP Rule 3 to reverse judgment entered without jurisdiction. This petition is timely filed in conformity with 28 USC §2101(c) and Supreme Court rule 20(.2,.4). The judgment of the U.S. Court of Appeals for the Ninth Circuit for which review is sought was issued on July 3, 1989.

CONSTITUTIONS, STATUTES, RULES

The following are pertinent to this case as set forth in the appendix: 1st, 5th, and 7th Amendments of the U.S. Constitution; 18 USC §§ 241, 371, 1621, 28 USC §§ 1446-7, 1912, 2283, 144, 455; FRCP 7,11,15; FRAP 38; Oregon Constitution Art. I, §§10,16,17, ORS 9.460, 161.450, 162.065, 162.085,162.235,162.305, 166.715 et seq., ORCP 7, 19, 23.

FACTS OF THE CASE

The petitioner, defendant below, filed a complaint in a state court on April 29, 1987, seeking trial by jury for damages from plaintiffs herein and others with common law cause of action "Unlawful interference with and obstruction of justice and by fraudulent use of legal proceedings pursuant to conspiracy." Copy at p. A-101. That case is subject of pending **PETITION FOR WRIT OF CERTIORARI, Tyler v. Hartford, No. 88-1978.** The cause of action includes claim under Oregon statutes for damages caused by racketeering, outrageous conduct, and by prohibited conduct of lawyers. Cited are more 30 criminal and 90 fraudulent acts committed by plaintiffs in this instant action and their coconspirators. Notice of Disqualification of Judge Yraguen, a named coconspirator of the defendants, including plaintiffs herein, was filed by the

petitioner on June 5, 1987. Three days later, admitting conspiracy with Judge Yraguen (verified by secret conferences for which they billed), on June 8, 1987, plaintiffs herein initiated this action seeking injunction by Judge Redden, another named coconspirator and in violation of Parsons Steel, Inc. v. First Alabama Bank, 474 US 518,525, 88 L Ed2d 877, 106 SCt 768 (1986) which held that, "Challenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be pursued by way of appeal through the state-court system and certiorari from this Court." After several documented secret conferences between plaintiffs and Judge Jackson, on July 30, 1987 Judge Jackson fraudulently dismissed the case under color of res judicata and collateral estoppel. Copy Appendix, p. A-394. Maintaining this case was in direct

violation of Parsons at 474 US 524, "*** limiting the relitigation exception of the Anti-Injunction Act to those situations in which the state court has not yet ruled on the merits of the res judicata issue." (It referred to "ruled on," and did not require final adjudication for anti-injunction.) Judge Panner fraudulently rationalized that he didn't violate Parsons because this case was initiated prior to the decision in the state court. p. A-86-7. The anti-injunction statute is concerned with the order of injunction, not the prior procedures. Plaintiffs delayed the instant action to obtain outrageous awards of attorney fees through conspiracy with the state judge and sought this injunction to stop appeal in state courts including for those fees. On October 6, 1987, the plaintiffs sought and obtained a 90 day extension under pretext to complete discovery, of which there was

none, and to lodge a pretrial order, which was never lodged. On **February 22, 1988**, they requested another extension of time, and on March 4, 1988, they requested a change in place of trial which could cause delay. In the meantime from January 30, 1988, to April 5, 1988, Judge Jackson awarded them over $20,000 in attorney fees for their time for one motion, motion to dismiss for failure to state a claim. The Yturri firm billed $650 for research of racketeering laws, and additionally for conferences with the district attorney. In petitioner's Motion to Vacate Settings for Pretrial conference and trial, submitted **March 11, 1988**, **the U.S. District Court was informed that the case had been dismissed by res judicata and collateral estoppel**, subject of pending appeal. It was submitted that the plaintiffs had not alleged or shown and could not show actual or threatened

irreparable injury or that illegal remedy was inadequate. Judge Panner denied the motion, went ahead with pretrial and trial in violation of all principles of equity and Parsons, and oppressively awarded the plaintiffs attorney fees for that motion. Trial was conducted on **April 11, 1988,** without the case being at issue, as no answer was filed, in violation of Rule 7, FRCP. Perjury was committed by Carl Burnham,Jr., copy of notice in Appendix, A-94. At least 3 perjuries were committed (pp.A-66, 73) including the statement that the case was dismissed as being frivolous to provide color of justification for Judge Panner to violate Parsons, when in fact it was dismissed by res judicata and collateral estoppel. **Notice of perjury and conspiracy to commit perjury was filed May 25, 1988.** p. A-94. Knowing the judgment and injunction were based upon perjury and conspiracy to commit perjury

by all plaintiffs, Judge Panner issued judgment and injunction on **August 15, 1988**, joining the conspiracy to obstruct justice.

Judge Redden initially was assigned the case. After notice he was disqualified, after motion to disqualify him, and after the petitioner filed petition for writ of mandamus in the Ninth Circuit Court of Appeals, Redden assigned the case to Judge Panner on July 7, 1987. Objections were filed for this apparent collusion and assignment without jurisdiction, and subsequently on September 21, 1987, the petitioner (defendant below) filed a motion to disqualify Judge Panner. Judge Panner continued to act on motions and settings prior to the dismissal of the motion to disqualify him by Judge Marsh on February 17, 1988. On February 8, 1988, the petitioner submitted motion to dismiss under Rule 12 for lack of subject matter

jurisdiction and for failure to state a claim, which was denied at pretrial conference. Pretrial conference was held over the objections of petitioner without the presence of the petitioner in Portland, Oregon, (375 miles from petitioner's residence), on March 23, 1988. Plaintiffs' motion for summary judgment was denied at pretrial conference. There was no pretrial order. The trial was fraudulent and completely irregular. The case relied upon for res judicata was commenced in a state court. The records of the case in that court were never removed to the federal court and are not in evidence in this case. That lack of records was planned to enable perjury by plaintiffs herein as to proceedings in the state court. Fees for time required in this case by the plaintiffs (who never entered appearances herein as attorneys) were awarded under color of state law by

the state court judge acting without jurisdiction. (subject of Petition 88-1978). Plaintiffs sought sanctions in U.S. District Court in the amount of $2,709.00 for attorney fees and were awarded $275 and costs. The U.S. Court of Appeals affirmed the judgments and injunction and oppressively ordered sanctions of double costs and attorney fees. It did not address any of the issues of the appeal, and held that the appeal was frivolous. Appeal was obviously pre-decided but was necessary to obtain review by this Court. The plaintiffs conducted this case with apparent management and control by the Oregon State Bar through its Professional Liability Fund and Hartford which was billed by the Yturri firm. Each plaintiff, the Bar, and Hartford were all sent copies of the notice of perjury on June 3, 1988. None renounced taking part in it or refuted it.

ARGUMENT

I. THE COURTS ERRED IN DENYING THE DEFENDANT'S MOTIONS TO DISMISS FOR LACK OF JURISDICTION

Judge Panner based jurisdiction of this case as being ancillary to Tyler v. Hartford, No. 86-854-RE, the case subject of fraudulent removal from the state court to federal court, and based jurisdiction under color of the res judicata exception of 28 USC §2283. p. A-15. Any judgment can be collaterally attacked in any proceeding if that judgment is void on the face of the record due to lack of jurisdiction or if fraud was committed that appears on the face of the record or goes to the issue of jurisdiction. Galpin v. Page, 18 Wall 350 (85 U.S.), 21 LEd 959 (1873); In re American Fidelity Corp., 28 F Supp 462,470 (S.D. Cal., 1939); State of Missouri v. Title Guaranty & Surety Co., 72 F2d 595 (8th Cir.1934). "(A)llegations

of fraud open the whole matter." Pell v. McCabe, 250 US 573, 63 LEd 1147, 40 SCt 43 (1934). On the face of the record, there was no jurisdiction of that prior case, fraud is alleged, and fraud on the face of the record goes to the jurisdiction and to the judgment. There was only **fraudulent color of compliance with 28 USC § 1446**. The so-called petition for removal was submitted fraudulently and without authority by the U.S. Attorney and it did not claim representative capacity. p. A-329. On the face of the record no defendant filed a verified petition for removal in the federal court, no bond was filed, and no defendant filed a copy of a verified petition for removal with the clerk of the state court. Each and all of those requirements are jurisdictional. The claim of jurisdiction was fraudulent on the face of the record and in conflict with Ayers v. Watson, 113 US 594, 5 SCt

641, 28 LEd 1093 (1885) and Maryland v. Soper (No. 1), 270 US 9, 46 SCt 185, 70 LEd 449 (1926), the latter holding that the requirements for removal including a petition verified and filed by a defendant must be followed by a federal officer claiming right to removal under 28 USC 1442. Judge Panner fraudulently ruled, "The only prerequisite to removal under section 1442 is that the action is against a federal officer or agency." p. A-16. The case he relied upon explained, "Proper service of process on the federal officer in the state court case is a precondition to removal under § 1442." IMFC Professional, Etc. v. Latin Am. Home Health, 676 F2d 152 **footnote** 4, p. 156, (5th Cir, 1982); Martinez v. Seaton, 285 F2d 587 (10th Cir, 1961). Proper service of the federal officer is required for subject matter jurisdiction. Housing Authority v. Millwood, 472 F2d 268 (5th

Cir, 1973). On the face of the record the federal court lacked jurisdiction of the prior case relied upon by Judge Panner for federal court jurisdiction of this case, and fraudulent color of use of 28 USC §1446 on the face of the record went to that lack of jurisdiction. More fraud went to the lack of subject matter jurisdiction of that prior case. When the service is bad, "the record stultifies itself, and the judgment is void on collateral attack." Munson v. Pawnee Cattle Co., 53 Colo 337, 126 P 275,276 (1912); Dixie Meadows Independence Mines Co. v. Kight, 150 Or 395, 45 P2d 909 (1935). "A judgment procured without the service of process is a fraud *** subject to attack either collateral or direct ***." Oklahoma Stockyards Nat. Bank v. Pierce, 234 P 144,145 (Okla, 1925). Attempted service upon Judge Finesilver was made by leaving a summons and

complaint with the clerk of the federal court in Denver, Colorado. He was not served in a manner allowed by Oregon statutes and there was no personal jurisdiction of him. Rule 7, ORCP. Heatherly v. Hadley, 4 Or 1 (1869); South State Inv. Co. v. Brigum, 43 Or App 273, 602 P2d 1084 (1979). The claim that Finesilver was served is in conflict with Galpin v. Page, 18 Wall 350, 21 LEd 959 (1873) requiring strict compliance with statutes allowing service out of state.

When parties admit facts which show a judgment is void such as lack of service of a summons, it is the same as if the judgment is void on its face. Taylor v. Lauridsen, 161 Cal 120, 118 P 535 (1911); In re Ivory's Estate, 37 Cal App2d 22, 98 P2d 761 (1940); Boulter v. Cook, 32 Wyo 461, 234 P 1101 (1925); Welch v. Morris, 49 Id 781, 291 P 1048 (1930). The petitioner, plaintiff in that case

fraudulently before Judge Redden, claimed in motion to remand that Finesilver was not served. The removal statute 28 USC §1446(a) requires that with the petition the removing party "shall file *** a copy of all process, pleadings, and orders served upon him ***." On the face of the record, no summons served upon Finesilver was filed, an admission that he was not served a summons. In the so-called petition for removal, the U.S. Attorney maintained that the federal "Defendants have not been served ***." The inference is clear that in order to justify his false and fraudulent claim of federal court jurisdiction, the Hon. James A. Redden had a transcript of a hearing falsified as alleged in the complaint, paragraph 53(e)(1), pp A-223-4. (Other records were falsified, pp A-169, 176-7.) The transcript has Ms Kobbervig, Assistant U.S. Attorney stating, "Judy

Kobbervig, representing the three circuit and one district court judge; Judge Silverstein has never been served in this case." Finesilver was the federal district court judge; Silverstein was a state court judge with whom Kobbervig had no connection. The inference is clear that Kobbervig claimed Finesilver was not served.

"The record in the cause must show that proper service has been had." Dixie Meadows Independence Mines Co. v. Kight, supra. In the prior case claimed to have been removed to federal court, and upon which Judge Panner claimed res judicata applies here, the federal court had and has no original or duly authenticated returns of summonses in its record. To enable fraud in the prior case, nothing was done pursuant to 28 USC §1447 to remove records from the state court. To enable fraud in this case, the entire

record of that prior case in state and federal court is not in evidence. The presumption, without record of service, is against federal court jurisdiction. 35A CJS Fed. Civil Procedure § 449, p. 658.

Jurisdiction of this instant case is fraudulently claimed to be based upon the res judicata and collateral estoppel exception of the anti-injunction statute, 28 USC § 2283. Application of res judicata to bar an action, the denial of the Constitutionally protected right of trial, requires identical parties or their privies and positive proof with strict certainty of prior fair and full litigation of the precise issues of both cases in a court having jurisdiction. Russell v. Place, 94 US 606, 24 LEd 14 (1877); County of Mobile v. Kimball, 102 US 691, 705, 26 LEd 238,242 (1880); Ropacki v. Ropacki, 354 Ill 502, 188 NE 400 (1933); Johnston v. Ota, 43 Cal App2d

94, 110 P2d 507 (1941); Bernhard v. Bank of America Nat. Trust & Sav. Ass'n, 19 Cal2d 807, 122 P2d 892 (1942); Pomeroy v. Waitkus, 183 Colo 344, 517 P2d 396 (1974). Use of res judicata here is in conflict with Durfee v. Duke, 375 US 106, 11 LEd2d 186, 84 SCt 242 (1963) which held that res judicata is not to be applied when fraud is alleged as to the prior judgment. Injunction was denied, as "allegations of fraud open the whole matter." Pell v. McCabe, supra. The causes of action must be the same. Jones v. Flannigan, 270 Or 143, 526 P2d 543 (1974). The due process clause of the 5th Amendment must be satisfied as to standing. Southwest Airlines Co. v. Texas Intern. Airlines, 546 F2d 84 (5th Cir, 1977); Pell v. McCabe, supra. On the faces of the complaints, the parties are different, the causes of action are different, and the issues are different. The claim that the

issue of conspiracy between plaintiffs herein with each other and with Judge Redden to obstruct justice by fraudulent use of legal proceedings was adjudicated in that prior case is grossly fraudulent. The claims are fraudulent that the prior action adjudicated the allegations that the plaintiffs herein joined a continuing conspiracy to obstruct justice, that prior litigation determined the issues of violations of Oregon state anti-racketeering statutes and Oregon state statutes prohibiting misconduct of attorneys by the plaintiffs, and that a prior case litigated the issue of liability of these plaintiffs for the damages proximately resulting from their wrongful acts. See Pomeroy v. Waitkus, supra at 517 P2d 400. The judgment and injunction is in conflict with Dennis v. Sparks, 449 US 24, 101 SCt 183, 66 LEd2d 185 (1980), which allowed suit against

coconspirators of judges.

The lawsuit subject of injunction is based upon **common law** suit for damages resulting from fraudulent use of legal proceedings committed pursuant to conspiracy to obstruct justice. Verplanck v. Van Buren, 76 NY 247 (1879); Akers v. Sears Roebuck & Co., 38 F Supp 741 (Id,1941); Graham v. Morgan, 129 F Supp 199 (ND,Ok, 1955), aff'd 228 F2d 625 (10th Cir,1956); Dixon v. Bowen, 85 Colo 194, 274 P 824 (1929); Clark v. Lesher, 235 P2d 71 (Cal App, 1951); Radue v. Dill, 74 Wis2d 239, 246 NW2d 507 (1976); Smith v. Nippert, 76 Wis 86, 44 NW 846 (1890); Clark v. Sloan, 169 Ok 347, 37 P2d 263 (1934); Getsinger v. Corbell, 188 NC 553, 125 SE 180 (1924); Frist v. Gallant, 240 F Supp 827 (WD,SC,1965); Newin v. Hartford Accident & Idemnity Co., 37 NY2d 211, 333 NE2d 163 (1975). It includes suit for damages intentionally maliciously

caused by breach of Oregon statutes prohibiting attorney misconduct and damages from racketeering. ORS 9.460, 166.725. O'Toole v. Franklin, 279 Or 513, 569 P2d 561 (1977); Bob Godfrey Pontiac, Inc. v. Roloff, 291 Or 318, 630 P2d 840 (1981). The suit does not seek to invalidate the judgment of the prior lawsuit, and injunction is prohibited by 28 USC § 2283. Ver Planck v. Van Buren, supra; Dixon v. Bowen, supra; New Orleans Land Co. v. Leader Realty Co., 255 US 266, 65 LEd 621, 41 SCt 259 (1920).

On the face of the record, the federal court had no jurisdiction of the prior case. Without jurisdiction of the prior case, the U.S. District Court had no jurisdiction of this case. Fahey v. Calverly, 208 F2d 197 (9th Cir, 1953), cert den. 347 US 955; Hume v. City of New York, 255 F 488 (2nd Cir, 1919), cert den 249 US 603. The issue of jurisdiction

of the federal court in the prior case is claimed to have been litigated by denial of the petitioner's motion to remand. As noted, res judicata does not apply to that ruling when on the face of the record the court lacked jurisdiction and fraud is alleged. Also, "'when the matter of fact or law on which jurisdiction depends was not litigated in the original suit it is a matter to be adjudicated in the suit founded upon the judgment. Thompson v. Whitman, 18 Wall 457, 21 L.Ed. 897,'" Laughlin v. Hughes, 161 Or 295, 89 P2d 568,572 (1939), adopting and quoting from Adam v. Saenger, 303 US 59, 58 SCt 454, 82 LEd 649. The issue of continuing jurisdiction without the service of a federal officer was not decided. The issue of lack of original or duly certified copy of the properly amended complaint was not addressed. Without authenticated pleadings, the federal court

lacked jurisdiction to decide any of the issues therein. Roth v. Roth, 1 NE2d 724 (Ill App, 1936); Hart v. Hunter, 114 882 (Tex Civ App, 1908); Tanton v. State Nat. Bank of El Paso, 43 SW2d 957 (Tex Civ App, 1931). Fraud is apparent on the face of the record including concerning lack of authenticated pleadings which goes to lack of jurisdiction and to the judgment. The fraudulent document claimed to be a petition for removal filed by the U.S. Attorney, not a defendant, was not verified. The accompanying document, a null and void complaint replaced in the state court by an amended complaint, was therefore not authenticated. The so-called complaint filed in the federal court had been replaced properly in the state court by an amended complaint prior to the filing of the phony claim of removal in that court to execute removal, 28 USC §1446(e), prior to any responsive

pleadings, and prior to the filing of any motions in the state court. (**Burnham committed perjury** as to filing of motions prior to the filing of the amended complaint; proof of the falsity is in the state court record. The proof is in the record of this case in defendant's Motion to stay judgment and suspend injunction pending appeal; The Register of actions appended as an exhibit shows no filing of any documents by defendants therein prior to filing of the amended complaint.) The complaint was a nullity. Rule 23, ORCP; Wells v. Applegate, 12 Or 208, 6 P 770 (1885); Noonan v. City of Portland, 161 Or 213, 88 P2d 808 (1938); Young v. Martin, 8 Wall 354, 19 LEd 418 (1869). The use of the null and void, non-authenticated complaint by the plaintiffs and judge in the federal court is a fraud on the face of the record. That fraud is admitted by Burnham's perjury. On the

face of the record the federal court had no authenticated pleadings, no jurisdiction of the issues of the pleadings, and did not validly adjudicate any of the issues of that lawsuit. There is no valid judgment of the federal court in that case upon which to base ancillary jurisdiction in this lawsuit under 28 USC 2283.

The doctrine of res judicata does not apply to the issue of personal jurisdiction of the plaintiff (the defendant-petitioner herein) which was not decided in that prior case. Baldwin v. Traveling Men's Assn., 283 US 522,525, 51 SCt 517, 75 LEd 1244 (1931). The plaintiff (defendant-petitioner herein) did not seek any remedy in the federal court, a requisite for personal jurisdiction of the plaintiff. 21 CJS § 83; Vincent v. McElvain, 304 Ill 160, 136 NE 502 (1922); State v. Utz, 236 SW

386 (Mo App, 1922). The only presence of the plaintiff was prior to determination of his motion to remand and only because he was ordered to appear at that time. Lack of personal jurisdiction of the plaintiff makes the judgment void, and it deprives a judgment of res judicata or collateral estoppel effect. Rankin v. Howard, 633 F2d 844 (9th Cir, 1980); Americana Fabrics, Inc. v. L & L Textiles, Inc., 754 F2d 1524 (9th Cir, 1985).

Judge Redden fraudulently dismissed for the following given reasons: Hartford, T. Roberts, Smith, Kelly, Ruland, Roan, Bockman, Foote, and Vollack for lack of personal jurisdiction; Kostol, Ferrin, Reid, and Bobbit by statutes of limitation; Johnson, Danford, Silverstein, Steinberg, Tursi, Van Cise, Jacobucci, and Ericksen were not served summonses or pleadings; Craig "based upon judicial immunity and plaintiff's failure

to provide notice and file within the applicable statute of limitations;" and judicial immunity of Finesilver, Seth, McKay, and Logan. p. A-359. It is obvious that those dismissals determined no issues of the lawsuit subject of injunction. The dismissals **with prejudice** as to Hartford, Thomas L. Roberts, Ruland, Smith, Kelly, Roan, Bockman, Foote, Vollack, Johnson, Danford, Silverstein, Steinberg, Tursi, Van Cise, Jacobucci, and Ericksen and all defendants not served are indisputably **plainly fraudlent** on the face of the record going to the judgment because by his own rulings Judge Redden lacked personal jurisdiction. Affirmations of those dismissals with prejudice in this suit by the U.S. District Court and Ninth Circuit Court of Appeals are equally fraudulent.

For all the above reasons, The court erred in denying the petitioner's motion

to dismiss for lack of jurisdiction.

II. THE COURT ERRED IN DENYING PETITIONER'S MOTION TO DISMISS BY RULE 12

A complaint for injunction requires an allegation and showing of standing. Allen v. Pullman's Palace Car Co., 139 US 658, 35 LEd 303, 11 SCt 682 (1890); 42 Am Jur2d § 169, pp. 1062-3. The complaint was not dismissed even though it did not allege standing. The plaintiffs falsely and fraudulently alleged in paragraph 7 of their complaint, "Some of these defendants (86-06-20969-L) are now plaintiffs in the present action." (emphasis added) The only plaintiff herein who was a defendant in that prior action is Craig, on the face of the complaints. Each person seeking an injunction must show standing to seek such an injunction. United States v. Schwartz, 562 F2d 427 (7th Cir, 1977); 42 Am Jur2d § 169. The plaintiffs have shown no standing to sue for injunction, and the

complaint fails to state a claim for that reason as well as for other reasons.

In direct conflict with decisions of this Court, the complaint was allowed for injunction to stop a pending state court case without allegation of actual or threatened **great, immediate irreparable injury.** Huffman v. Pursue, Ltd., 420 US 592, 95 SCt 1200, 43 LEd2d 482 (1975). It does not allege actual or threat of any irreparable injury, the indispensable basis for exercise of any equity powers. State of Texas v. State of Florida, 306 US 398, 411, 59 SCt 563, 83 LEd 817 (1939); 30 CJS Equity § 42, p. 855. In direct conflict with decisions of this Court, the complaint for injunction was allowed without allegations of **inadequate remedy at law.** Georgia v. Brailsford, 2 Dall 402, 405, 1 LEd 433,435, (1792); Spielman Motor Sales Co. v. Dodge, 295 US 89, 79 LEd 1322, 55 SCt 678 (1935); Allen v.

Pullman's Palace Car Co., supra; 42 Am Jur2d §. 169.

The complaint fraudulently fails to state the basis for dismissals in the prior case. As in Johnston v. Ota, 43 Cal App2d 94, 110 P2d 507, 510 (1941), "There were no means by which the court could have determined whether demurrer in the former case was sustained for want of jurisdiction or upon one or more of the special demurrers or whether it was for lack of substance in the complaint to constitute a cause or causes of action. 'If on the face of the record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded and nothing conclusive in it when offered in evidence.'" See Russell v. Place, 94 US 606,610, 24 LEd 14 (1877). The only issue identified and alleged as decided in the prior action is a "conspiracy theory." In

a civil action alleging conspiracy, the gist of the action and the cause of the action is not the conspiracy. The cause of the action is based upon the wrongful acts done by one or more of the defendants to the injury of the plaintiff. 16 Am Jur2d Conspiracy § 44, p. 150; Bonds v. Landers, 279 Or 169, 566 P2d 513 (1977); Lockwood Grader Corp. v. Bockhaus, 129 Colo 339, 270 P2d 193 (1954). " *** (A)n allegation of the conspiracy does not in and of itself allege a cause of action, and ordinarily it need not be alleged in order to impose liability for the wrong on all who have conspired to commit it." 15A CJS pp. 678, 686; 16 Am Jur2d § 62, p. 157. (An alternative to conspiracy is in paragraph 6 of the complaint of the case subject of the injunction, "Furthermore, and in addition, the defendants are liable for all injuries and damages to the plaintiff alleged herein

from all acts alleged herein because of their having been proximately caused by intentional acts of defendants and others which have combined to produce an indivisible, unapportionable injury.") Even if a "conspiracy theory" was decided as alleged, (which is not true), that would not be determinative of any issue or of a cause of action in a subsequent case. Furthermore, acts may revive a continuing conspiracy and when persons knowingly join a conspiracy they are responsible for all of the acts committed pursuant to that conspiracy before and after their joining. 16 Am Jur2d pp. 150-1. A jury found a conspiracy. This injunction illegally denies the petitioner remedy for all acts committed by persons who joined or who may join that conspiracy in the future. The plaintiff repeatedly has been denied right of trial by jury illegally pursuant to continuing conspiracy through various

guises which now includes fraudulent misapplication of res judicata.

Plaintiffs do not allege (a) that all parties are the same or in privity, (b) that the causes of action are the same, or (c) that all of the issues are the same in the two lawsuits, all three of which are required to state a claim to apply the doctrines of res judicata and collateral estoppel. They have shown no standing. They have not alleged actual or threatened irreparable injury or inadequate remedy at law. The fundamental requirements for a complaint seeking an injunction by application of res judicata were not met. Not dismissing this case for failure to state a cause of action was error and in direct conflict with decisions of this Supreme Court.

III. JUDGE PANNER ACTED WITHOUT JURISDICTION AND IN VIOLATION OF THE FIFTH AMENDMENT

On July 7, 1987, the Hon. Owen M. Panner was assigned this case by a disqualified judge, The Hon. James Redden, who was a named coconspirator in the pending state court subject of this injunction. p. A-130. The petitioner received no prior notice of reassignment or recusal by Judge Redden. There is no record of prior recusal, and Judge Redden, and not Judge Panner, issued the order on July 7, 1987. Any claim of reassignment of this case prior to July 7, 1987, must be considered in the light that this district court has an established record of falsification of records. (See complaint of case subject of injunction, pp. A-169,176,224.) **As a matter of law, Judge Panner acted at all times without jurisdiction.** 28 USC § 144 provides, "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge

before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, ***." Other courts considering similar statutes have held that the judge has no jurisdiction at that point, including the assignment to another judge. Gaer v. Bank of Baker, 107 P2d 877 (Mont. 1940); State v. Thomson, 76 ND 125, 34 NW2d 80 (1948); Aaberg v. Dist. Ct., 136 Colo 525, 319 P2d 491 (1957); State v. George, 250 Ark 968, 470 SW2d 593 (1971); Casterella v. Casterella, 65 A.D.2d 614, 409 NYS2d 548 (1978). The assignment of Judge Panner to this case was made by Judge Redden acting without jurisdiction, and that assignment is therefore void. Judge Redden chose Panner to judge his (Redden's) case and Panner accepted the assignment knowing that it was without jurisdiction and the prohibited result of a judge choosing

another judge to try his case. It is just one step removed from a judge trying his own case. Collusion is apparent to any reasonable person; "his impartiality might reasonably be questioned." Judge Panner abused discretion in not recusing himself pursuant to 28 USC § 455(a).

Motion to disqualify Judge Panner was filed by the petitioner on **September 23, 1987.** Judge Marsh erroneously denied the motion on **February 17, 1988**. In the meantime, in violation of 28 USC § 144, on December 3, 1987, and December 4, 1987, Judge Panner set the case for trial to be held 4/11,88, and ordered pretrial dates and procedures. On **January 3, 1988**, Judge Panner dismissed defendant's motion to dismiss for lack of personal and subject matter jurisdiction. Acts by Judge panner between the time the motion for disqualification was filed and the time it was denied were without authority and void

regardless of the outcome of the motion. The petitoner was prejudiced by denial of an impartial judge by oppressive acts of Judge Panner including acting without legal and equity jurisdiction, denial of motions to dismiss, holding trial with the case not at issue, issuance of injunction knowingly based on perjuries and conspiracy, and order of sanctions and timed to require additional notice of appeal and fee. The petitioner was denied his right to an impartial judge in conflict with In re Murchison, 349 US 133, 75 SCt 623, 75 LEd2d 942 (1955), and in violation of the 5th Amendment.

IV. FIRST AMENDMENT VIOLATION

The injunction precludes public disclosure of matters of public political interest in public jury trial by prior restraint. The lawsuit subject of the injunction seeks public trial by jury for damages resulting from fraudulent use of

courts, racketeering and conspiracy by the plaintiffs herein, who are all attorneys, insurance companies, the Attorney General of Oregon, the U.S. District Attorney, and state and federal judges. **Trial of the pending case and future cases enjoined** could disclose publicly the foregoing and that the Oregon Court of Appeals and Oregon Supreme Court have approved and ratified conspiratorial conferences between the plaintiffs and Judge Jackson, Oregon judge, to dismiss the case and to award attorney fees, **subject of pending petition for writ of certiorari, Tyler v. Hartford, No. 88-1978**, in conflict with Dennis v. Sparks, supra, which allows trial against coconspirators of judges. The petitioner's rights guaranteed by the First Amendment have been violated and continue to be violated by the injunction subject of this petition.

V. THE JUDGMENT AND INJUNCTION WERE KNOWINGLY BASED UPON PERJURIES BY A PLAINTIFF AND CONSPIRACY TO COMMIT PERJURIES BY PLAINTIFFS AND THEIR COUNSEL,

The injunction and judgment in this lawsuit were knowingly based upon perjuries and conspiracy to commit perjuries. Knowing each part was false, Carl Burnham, Jr., lawyer-plaintiff, falsely stated under oath at trial, "We then filed motions to dismiss in the State Court on grounds of collateral estoppel. *** An amended complaint was filed shortly thereafter, ***." p. A-73. The amended complaint was filed prior to the filing of any motions or responsive pleadings as a matter of right. Proof is in **REGISTER OF ACTIONS** in the state court appended to **DEFENDANT'S MOTION TO STAY JUDGMENT AND SUSPEND INJUNCTION PENDING APPEAL.** Excerpt of Record p. E-166, Appendix A, p. A-398. That perjury provided color of

invalidation of the amended complaint. ORCP 23, Appendix A, p. A-416. That perjury admits all the fraud concerning the null and void complaint including the motions directed to it, and judgment based upon it. The fraudulent invalidation of the amended complaint by this perjury was necessary for a judgment subject of enforcement by injunction in this case. Judge Redden's judgment was based upon the null and void complaint and was invalid. The perjury admits that. Jurisdiction of the district court in this case depended upon a valid judgment in that prior case. The perjury provided color of a valid judgment in the prior case directed to the "complaint." The judgment and injunction subject of this petition are based upon and dependent upon that perjury. <u>The perjury not only admits fraud in this case as to all issues concerned with the null and void complaint. It admits the fraud</u>

in the dismissal by res judicata and collateral estoppel by Judge Jackson and its affirmation by the Oregon Court of Appeals and Oregon Supreme Court, and the fraudulent awards of attorney fees in the state trial and appeal courts, in the U.S. District Court, and in the Ninth Circuit Court. SUBJECT OF PETITION NO. 88-1978.

Proof that no motions were filed to dismiss the case ("removed") on grounds of collateral estoppel is in Defendant's Motion to Stay Judgment and Suspend Injunction Pending Appeal. The perjury provided Judge Panner a prior federal court decision of res judicata as to Colorado State Court cases as color of jurisdiction tc base injunction upon them.

Burnham also falsely stated under oath, "Judge Jackson dismissed the complaint as being frivolous." p. A-66. That perjury was to confuse the record and provide color of lack of knowledge of Judge Panner

that the state court had ruled upon the res judicata issue and to cover the issuance of the injunction in violation of Parsons Steel, Inc. v. First Alabama Bank, 474 US 518, 88 LEd2d 877, 106 SCt 768 (1986). As noted above, pp. 7-8, Judge Panner knew that the case was dismissed under color of res judicata on July 30, 1987. p. A-394. By their communications and mutual interests, the inference is clear that all plaintiffs, their attorneys, the Oregon State Bar, and Hartford Insurance Co., conspired to commit those perjuries. All of them and the court were notified by certified mail of perjuries and conspiracy, p. A-94. None refuted or renounced taking part in it. Injunction issued to benefit conspirators.

VI. FRAUDULENT TRIAL IN VIOLATION OF 5TH AMENDMENT

The defendant-petitioner had not answered the complaint and was

under no duty to appear at the so-called "trial." Maytag Southwestern Co. v. Thornton, 20 SW2d 283 (Tex Civ App, 1929) **The petitioner did not appear and did not waive his right to answer the complaint** and to submit all defenses allowed in mandatory words by the rules of procedure. Rule 7, FRCP. Pleadings are not closed until an answer is filed. First Presbyterian Church v. Rabbit, 118 F2d 732 (9th Cir, 1941); Williams v. Walnut Park Plaza, Inc., 68 F Supp 957 (DC,Pa,1946); Hume v. City of New York, 255 F 488 (2nd Cir, 1918); 35 CJS p. 438. There is no provision in the rules for trial without the answer. The Court did not order a default judgment because the complaint was a fraudulent guise to obtain trial for claims that would by common law be claims for malicious prosecution for which there is a right to jury trial. The Court went ahead with a fraudulent trial,

depending upon Rule 15, FRCP, which provides color of jurisdiction for a judge to try a defendant for anything in the choosing of the judge. The Court admitted as evidence dubious documents related to matters far afield from the complaint as pretext for a fraudulent holding that the lawsuit pending as well as others were "vexatious." It is elementary that due process requires that a defendant be apprised of what he has to defend in adequate time to prepare a defense. That is the purpose of a complaint, and "proof without pleadings is useless." Roth v. Roth, 1 NE2d (Ill App, 1936: Tanton v. State Nat. Bank of El Paso, 43 SW2d 957 (Tex Civ App, 1931). An injunction must conform to the pleadings. Henson v. Payne, 302 SW2d 44 (Mo App, 1956); Sinclair Refining Co. v. Wyatt, 347 Mo 862, 149 SW2d 353. Trial was held without a complaint that revealed the true nature

of the charges to be defended against, the claim of malicious prosecution under pretext of jurisdiction based upon res judicata. Holding "trial" when the case was not at issue has been held by other courts to be abuse of discretion, reversible error, and here it was a fraudulent unlawful obstruction of justice. Swan v. Landgren, 6 Wash App 713, 495 P2d 1044 (1972); Roth v. Roth, 1 NE2d 724 (Ill App, 1936; Bently v. Barrett, 146 So 349 (La App, 1933); Roush v. District Court of Eighth Judicial Dist. for Cascade County, 101 Mont 166, 53 P2d 96 (1935); Bennett v. Gray, 333 Ill App 143, 76 NE2d 798 (1948); 88 CJS Trial §§ 4,12,29,30. The petitioner presented to the district court valid affirmative defenses and the prejudice of not being allowed to answer prior to trial. The trial was totally fraudulent being held without subject matter jurisdiction, by a

judge lacking jurisdiction, when the case was not at issue, based upon a complaint that was totally deficient as to stating a cause of action, rules of evidence were violated, and the decision was knowingly based upon perjury and conspiracy to commit perjury. The defendant was deprived the right of fair trial without due process of law in violation of the 5th Amendment.

VII. PLEADINGS DO NOT SUPPORT JUDGMENT AND INJUNCTION

"Pleadings are essential to support the judgment of a court of record, and are as necessary a basis for a valid judgment as evidence." 49 CJS Judgments pp. 95,99; 42 Am Jur2d Injunctions p. 1097; Roth v. Roth, supra. An injunction must conform to the pleadings. Henson v. Payne, supra; Sinclair Refining Co. v. Wyatt, supra; Allen v. Pullman's Palace Car Co., supra.

There is nothing in the pleadings about any prior suit other than the case fraudulently removed to the federal court, no allegation that any case was commenced without probable cause or vexatiously, and no claim of res judicata except as to "a conspiracy theory." The judgment and injunction not supported by pleadings violated and continue to violate the rights of the petitioner guaranteed by the due process clause of the 5th Amendment.

VIII. NO EVIDENCE IN SUPPORT AND ALL EVIDENCE IS CONTRARY TO FINDINGS, JUDGMENT, AND INJUNCTION

(1) There was no showing or finding of standing, actual or threatened irreparable injury, or inadequate remedy at law to support issuance of the injunction.

(2) The entire duly authenticated record of the prior cases is required to bar by res judicata or collateral estoppel. Laughlin v. Hughes, 161 Or 295,

89 P2d 568 (1930); Johnston v. Ota, 43 Cal App2d 94, 110 P2d 507 (1941). The entire record of no case other than the instant case is in evidence. **There is not even pretense that the state court record of the case relied upon in the complaint is in evidence.** Trial exhibits 1 through 12 were identified as being complaints of prior lawsuits. p. A-65. No other parts of those lawsuits are evidence except Exhibit 5 which was submitted as an unpublished opinion of the Colorado Court of Appeals, which was fraudulent subject of paragraph 8 (6) of the complaint of the case subject of injunction.

The court took judicial notice of records in the federal court of the case upon which claim of jurisdiction and res judicata is based in conflict with Johnston v. Ota, supra, at 110 P2d 509, holding, "The authority of a court to take judicial notice of its own records is

limited to proceedings in the same case." There is no evidence supporting any claim of bar by res judicata or collateral estoppel. There is no evidence that the petitioner initiated any lawsuit without probable cause or for improper purposes, or that any of the parties of those prior lawsuits made such claims, or that any court involved made such holding.

(3) There was no valid judgment in the case relied upon for res judicata in conflict with Rich v. Mentz Township, 134 US 632, 10 SCt 610, 33 LEd 1074 (1889).

(4) Res judicata and collateral estoppel require identical parties or their privies and a showing that precisely the same question was raised and determined in the prior suit. Ropacki v. Ropacki, 354 Ill 502, 188 NE 400 (1933); Pomeroy v. Waitkus, 183 Colo 344, 517 P2d 396 (1973). All evidence is to the contrary. The Court, pp. A-86-7, found that Judge

Redden dismissed the prior action based upon judicial immunity, statute of limitations and the failure to state a claim. "Unless the issues have 'necessarily been' decided in earlier proceedings, res judicata (citations) and collateral estoppel are unavailable as defenses to prevent their trial (citations)." Newin Corp. v. Hartford Accident & Indemnity Co., 37 NY2d 211, 333 NE2d 163,166 (1975). There is no finding of issues necessarily decided in the prior case that apply to the instant case and that the parties and issues are the same in the instant case. Judge Panner's findings do not support the judgment. His finding that the various cases cited were based upon "identical or similar set of facts" does not support the judgment. p. A-33. Which is it identical or similar? Also, that finding is contrary to all evidence. No prior lawsuit alleged

a conspiracy among the plaintiffs herein and between them and Judge Redden, alleged violation of criminal statutes including racketeering by the plaintiffs herein, alleged that the plaintiffs herein joined and participated in a continuing conspiracy, or alleged liability of these plaintiffs for the damages proximately caused by their wrongful and criminal acts. He found the suit subject of the injunction "vexatious" because of adverse court rulings on the "same or similar issues" in prior case. p. A-35-6. Which is it, same or similar? The continuing conspiracy with fraudulent use of legal proceedings is the cause of action. His finding that the "the substance" "is precisely the same," (pp. A-37-8) is in conflict with all evidence; and even that erroneous finding does not support application of res judicata given the prior judgment of dismissal based upon

failure to state a claim. **The court does not cite any issue that was decided in the prior action that is precisely the same issue as the case enjoined.** The Court avoided the issue of fraudulent dismissals "with prejudice" based upon lack of personal jurisdiction and of persons not served. Judge Redden refused to dismiss Hartford for outrageous conduct claim. The award by a jury to the petitioner of $730,000 including punitive damages requiring proof beyond reasonable doubt was not an adverse verdict. **All adverse rulings in other cases are alleged in the complaint to be fraudulent, the result of conspiracy, and not subject to res judicata.** Award of attorney fees by Judge Jackson, the result of fraud and collusion, and not finally litigated, does not prove anything regardless of such ruling. p. A-36. Subject of petition for writ of certiorari No. 88-1978.

IX. NO JURISDICTION CONCERNING MERITS OF CASE PENDING IN STATE COURT; NO JURISDICTION TO ENFORCE STATE COURT JUDGMENTS BY INJUNCTION

The U.S. District Court had no jurisdiction to rule upon the merits of any case pending or decided in state courts. Slaughter-House Cases, 77 US 273, 19 LEd 915, 10 Wall 273 (1869). Finding the pending case "was vexatious, without probable cause, wanton and in bad faith and for purposes of harassment," (pp A-35-6) and judgment and injunction based thereon are without jurisdiction. Without perjury by Burnham of prior federal court decision of res judicata, review of state court cases by equity and not in accord with common law as to res judicata and suit for malicious prosecution, violated the 7th Amendment, U.S. Constitution.

An exception to 28 USC § 2283 allows a federal court to issue injunctions to enforce its judgments. The injunction

ordering the petitioner to not commence any lawsuits as to issues decided in a list of state court cases violates that statute, is without jurisdiction, and violates the due process clause of the 5th Amendment. Slaughter-House Cases, supra; Vendo Co. v. Lektro-Vend Corp., 433 US 623, 53 LEd2d 1009, 97 SCt 2881 (1977). The judgment and injunction illegally deny the petitioner the common law right of remedy by jury trial as to judgments entered against him that are the result of fraud and collusion or entered without jurisdiction, and deny him rights guaranteed by the 1st, 5th, and 7th Amendments of the U.S. Constitution.

X. VIOLATION OF LAW AND PRINCIPLES OF EQUITY IN ABUSE OF DISCRETION

Injunction in this case is prohibited by 28 USC § 2283. The law is clear that a party is entitled to an impartial judge, that a court is not to act without subject

matter jurisdiction, that bar of claims by application of res judicata and collateral estoppel requires identical parties or their privies in both suits and identical issues actually fully and fairly litigated, that malicious prosecution is a common law action in which a defendant has a right to trial by jury. The law is clear that a trial is not to be held until a case is at issue. The law is clear that the U.S. District Court is not an appellate court of state courts, and that it has no subject matter jurisdiction to determine the merits or lack of merits of lawsuits pending or decided in a state court. The law is clear that judgments are to be based upon competent evidence, and not knowingly based upon perjury.

Discretion must follow the law. State v. Lewis, 113 Or 359, 230 P 543 (1924); State v. Biggs, 198 Or 413, 255 P2d 1055 (1953). The judgment and injunction in

this case were issued in conflict with all pertinent laws and clearly in abuse of discretion. Exercise of equity powers requires standing, actual or threatened irreparable injury, and inadequate remedy at law. None of those requirements were alleged, shown, or found in conflict with decisions of this Supreme Court. Huffman v. Pursue, Ltd., supra; State of Texas v. State of Florida, supra; Atlantic Coast Line RR. Co. v. Brotherhood of Locomotive Engineers, 398 US 281, 90 SCt 1739, 26 LEd2d 234 (1970). The court violated the cardinal principle of equity jurisdiction, the clean hands doctrine. In addition to the many crimes and fraudulent acts of the plaintiffs herein alleged in the verified, unanswered complaint, the injunction was issued knowing it is based upon perjuries and conspiracy to commit perjuries in the presence of the Court by the plaintiffs. 30 CJS Equity §.93, pp. 1006-12.

XI. SANCTIONS AGAINST THE PETITIONER ARE A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW AND IN VIOLATION OF HIS 1ST, 5TH, AND 7TH AMENDMENT RIGHTS AND RULE 11, FRCP, RULE 38, FRCP, AND 28 USC § 1912 VIOLATE THOSE AMENDMENTS OF THE U.S. CONSTITUTION

Sanctions in the district court against the petitioner were for filing: (1) Objections to acts by Judge Panner, (2) Motion to disqualify Judge Panner, (3) Motion to stay pending writ or petition, (4) Motion to amend order denying motion to dismiss, (5) Motion to vacate settings. (1) and (2) rightly challenged jurisdiction of a judge assigned by a disqualified interested judge. In awarding sanctions, Judge Panner erred and was judging his own case in violation of In re Murchison, supra. (3) and (4) were to stop this case by determination in the Court of Appeals of lack of jurisdiction,

which was clearly right. 28 USC § 1292. (5) was directed to vacating settings of pretrial and trial because legal issues had not been settled and the complaint had not been answered. After the case was dismissed in the state court under color of res judicata and collateral estoppel, the plaintiffs could not show threat of irreparable injury or inadequate remedy at law. The court violated Parsons, supra, by not dismissing. The court violated FRCP 7 in setting and holding trial when the case was not at issue.

The Court of Appeals ordered sanctions of attorney fees and double costs under color of Rule 38 FRAP. It did not address the issues. **Plaintiffs seek $443.60 costs and outrageously $8,148 in attorney fees.** The appeal was decided on briefs without oral argument. These perjurers filed one brief that did not address the issues and relied upon a multitude of lies. The

petitioner requests permission to address sanctions further herein when the amounts of the awards are known. 28 USC § 1912 provides for "just damages for delay." Rule 38 provides for damages for delay and single or double costs. No loss due to delay was shown. Being penal, strict construction is required. Neither the rule or statute provide for award of attorney fees. In the alternative, both are void for vagueness. The petitioner submitted all documents in the trial and appeal court based upon sound legal and equity precedence. There were no specific charges of any instance of his not following rules of procedure, citing irrelevant cases, presenting faulty argument, or causing unwarranted delay. There was no evidence of violation of Rule 11, FRCP, and/or Rule 38 FRAP, by the petitioner. The orders of sanctions were issued arbitrarily, oppressively, in abuse

of discretion, and are a taking of property without due process of law in violation of the 1st, 5th, and 7th Amendments of the U.S. Constitution. The common law provides for trial by jury for complaints alleging abuse of process or malicious prosecution. The federal courts used and continue to use Rule 11, FRCP, Rule 38, FRAP, and 28 USC §1912 to threaten, intimidate, and illegally take huge sums of money from the petitioner and others under guise of those rules to suppress freedom of speech and right to petition of the government for redress of grievances in violation of the First Amendment, to illegally suppress and deny the right of public trial by jury in violation of the First, Fifth, and Seventh Amendments, to deny the right of appeal in violation of the Fifth Amendment, and to deny the free access to the use of the courts established by the Magna Carta, the

common law, Declaration of Independence, and in this instant case to deny rights guaranteed in the Oregon Constitution, Art. I, § 10,16,17. Those rules and statute are therefor unconstitutional and void. Without the right of trial by jury, so-called rights are non-enforceable and illusory. This government holds out that common people have right to trial, the petitioner relied upon that holding out and to his detriment not only in loss of time and expense, but he has been fined and abused for seeking trial, a Constitutionally guaranteed right. Angle v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 151 US 1, 38 LEd 55 (1893).

CONCLUSION

This case and related cases have been conducted by the courts like a confidence scheme including by secret conspiracy between lawyers and judges and the use of perjury. The petitioner's rights

guaranteed by the 1st, 5th, and 7th Amendments have been violated and continue to be violated by the injunction, judgment of injunction, and sanctions ordered by the District Court and by the Court of Appeals. For the foregoing reasons, to order overturning of the judgments of the district court and the Court of Appeals, to order dissolution of the injunction, and to correct the wrongful, illegal conduct of judges and others, this petition for writ of certiorari should be granted.

Respectfully submitted by

Donald E. Tyler, M.D.
Petitioner, pro se
1092 SW 2nd Ave.
Ontario, Or 97914

August, 1989

APPENDIX A

ORDERS BY AND OPINIONS OF THE U.S. COURT OF APPEALS

UNITED STATED COURT OF APPEALS FOR THE NINTH CIRCUIT filed Jul 3, 1989 Nos. 88-88-4118, 88-4184, DC No. CV-87-601-PA

ANTHONY YTURRI; CLIFF S. BENTZ, et al., Plaintiffs-Appellees, v.

DONALD E. TYLER, M.D., Defendant-appellant

MEMORANDUM * (* not for publication, etc.)

Appeal from the United States District Court for the District of Oregon

Owen M. Panner, Chief District Judge, Presiding Submitted June 28, 1989 **

(** submitted on record and briefs)

Before: FERGUSON, BRUNETTI, AND O'SCANNLAIN, Circuit Judges

Appellant appeals an injunction and judgment entered by the district court enjoining him from pursuing a state court lawsuit, and also appeals its order imposing sanctions.

I

This action was originally brought pursuant to 28 U.S.C. § 2283, seeking to enjoin appellant from pursuing a state court lawsuit which he had filed in Malheur County, Oregon circuit court and to enjoin him from commencing, maintaining, or prosecuting any other similar actions. The case was originally assigned to Judge Redden, who recused himself, the case thereupon being reassigned to Judge Panner. Various motions, counter motions, petitions, and interlocutory motions were filed.

The trial was eventually held on April 11, 1988 in Pendleton, Oregon. Appellant did not appear. The court received into evidence appellees' trial exhibits and heard the testimony of appellees' witnesses. The court ruled in favor of appellees and granted them ten days in which to file a proposed injunction,

judgment, and a motion for sanctions. Appellees filed the proposed injunction and judgment and proposed findings of fact, conclusions of law, and order granting a permanent injunction. Judge Panner, having allowed appellant time to file pertinent objections, then issued an injunction and judgment which essentially enjoined Tyler from bringing future actions in state or federal courts relating to the issues and parties' rights adjudicated in Tyler v. Hartford Insurance, CV-88-854-RE.

Sanctions under Fed. R. Civ. P. 11 were in the amount of $275.00 Tyler timely appealed the injunction and imposition of sanctions.

II

Appellant bases his appeal on eleven arguments. The arguments upon which appellant seeks to overturn the injunction and judgment of the district court are as

follows: (1) the district court erred in denying the appellant's motion to dismiss for lack of jurisdiction; (2) the district court erred in denying the appellant's motion to dismiss under Rule 12; (3) the district court acted without jurisdiction in violation of the fifth amendment; (4) various first amendment violations; (5) the judgments and injunction were knowingly made based upon perjury by plaintiffs and conspiracy to commit perjury by all the plaintiffs and their counsel; (6) the trial was fraudulent in violation of the fifth amendment; (7) the pleadings do not support the judgment and injunction; (8) there is no evidence and there are insufficient findings to support the injunction and judgment and all the evidence is contrary to the judgment and injunction; (9) the court lacked jurisdiction concerning the merits of the case pending in state court and it had no

jurisdiction over state court judgments by injunction; (1) these orders are a violation of the principles of law and equity and are clearly an abuse of discretion; (11) the sanctions against the appellant were without evidence, contrary to all of the evidence, and a taking of property without due process of law in violation of the fifth amendment of the Constitution and Rule 11 of the Federal Rules of Civil Procedure.

This court declines to grace appellant's contentions with a point-by-point analysis of his allegations. His brief has shown no facts nor any basis in law for overturning the order and judgment of the district court. Appellant essentially seems to think that a federal court cannot enjoin future action in state courts. This court has found such an injunction may be available in a proper case. See Zipfel v. Halliburton Co., 861

F.2d 565, 568-70 (9th Cir.1988) (injunction preventing future litigation in state courts is proper.)

None of appellant's other objections has any merit in fact or law. Instead, they are similar to appellant's arguments which he has pursued in various cases for over fifteen years. To quote Lord Hewart, a former Lord Chief Justice of England, appellant has made eleven objections to the decision below. "He has argued each one. We have listened to him and we find that each one comes to nothing. Nothing multiplied by (eleven) is still nothing." Oxford Book of Legal Anecdotes 163 (M. Gilbert ed. 1987).

We have reviewed Judge Panner's findings and conclusions on the motion for imposition of sanctions under Fed. R. Civ. P. 11. We conclude that the order imposing $275.00 in sanctions is well founded and not an abuse of discretion.

Appellees have moved under Fed. R. App. P. 38 for sanctions on appeal. We find this appeal to be frivolous and hereby grant appellees' motion for attorney fees and double costs.

AFFIRMED.

ORDERS BY AND OPINIONS OF

THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA ANTHONY YTURRI, et al., Plaintiffs, v. DONALD E. TYLER, M.D., Defendant. ORDER REDDEN, Judge:

Defendant filed an action in state court approximately six weeks ago. Upon a review of that complaint, I determined it necessary to recuse myself in the above entitled action. The office of the U.S. Clerk was notified and issued its Notice of Reassignment on June 19, 1987, advising the parties. I have since received a veritable mountain of paper from defendant

on an issue already decided. For the record it is ORDERED that this case has been, and is, assigned to the Honorable Owen M. Panner for all further proceedings. Dated this 7 day of July, 1987. (signed) James A. Redden, United States District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA ANTHONY YTURRI, et al., Plaintiffs, vs. DONALD E. TYLER, M.D., Defendant. OPINION MARSH, Judge.

Defendant moves to disqualify the Hon. Owen M. Panner. The case at bar is an action for a preliminary injunction to prohibit defendant from proceeding with a complaint against the plaintiffs for alleged "Unlawful Interference With and Obstruction of Justice And by Fraudulent Use of Legal Proceedings Pursuant to Conspiracy." Further, plaintiffs seek to enjoin commencing, maintaining or

prosecuting in the Oregon state courts future claims based on the same allegations of conspiracy which were the basis for claims dismissed on the merits in the United States District Court for the District of Oregon in Civ.-86-854. The Hon. James A. Redden was assigned the underlying action.

Defendant moves to disqualify Judge Panner from this case contending that Judge Panner has a personal bias or prejudice in favor of Judge Redden and "in favor of the interests of the plaintiffs which correspond to the interests of Judge Redden." Specifically, defendant contends that Judge Panner's "direct interest" is "exposure of his colleague in a public trial by jury (that) would directly reflect upon him."

Title 28 U.S.C. § 144 provides: Whenever a party to any proceeding in a district court makes and files a timely

and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Defendant has submitted an affidavit contending that Judge Panner has personal bias in favor of the plaintiffs and prejudice against him. Thus the motion has been set before me.

Title 28 U.S.C. § 455 provides in relevant part: (a) Any . . . judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party . . .

The test for personal bias and prejudice is whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. United States v. Studley, 783 F.2d 934, 939 (9th Cir.1986); See United States v. Sibla, 624 F.2d 864, 867 (9th Cir.1980). The test of legal sufficiency of the section 144 affidavit is whether the affidavit "specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice directed toward a party that stems from an extrajudicial source." Sibla, 624 F.2d at 868; Ronwin v. State Bar of Arizona, 686 F.2d 692, 701 (9th Cir.1981), reversed on other grounds sub novo. Hoover v. Ronwin, 466 U.S. 558 (1984). The rationale of this rule lies in the distinction between the judicial opinions or biases developed by a judge during the course of court proceedings and

personal opinions or biases which have their origins in sources outside the courtroom. United States v. Conforte, 457 F.Supp. 641, 657 (D.C.Nev 1978), aff'd, 624 F.2d 869 (9th Cir.), cert. denied, 449 U.S. 1012 (1980). In his motion defendant contends that Judge Panner is biased because of his association with another judge of the same district. This contention is not legally sufficient to support personal bias or prejudice. Defendant°s motion is denied. DATED this 17 day of February, 1988. (signed) Malcolm F. Marsh U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK,

HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant.

OPINION PANNER, J.

Plaintiffs bring this action to enjoin defendant Donald Tyler from litigating claims against them in state court. Defendant moves to dismiss for lack of personal and subject matter jurisdiction. I deny defendant's motion.

BACKGROUND

Defendant is a physician in Malheur County, Oregon. In June 1986, defendant brought an action against several persons in Malheur County Circuit Court, including a federal district judge from the District of Colorado, alleging a conspiracy to interfere with business relations, "outrageous conduct," and violations of 42 U.S.C. § 1983.

On March 4, 1987, after the case was removed to this court, Judge Redden

dismissed the entire action on several grounds, including judicial immunity, statute of limitations, and failure to state a claim. Tyler v. Hartford Ins., No. 86-854-RE (March 4, 1987). Defendant did not appeal. Instead, on April 29, 1987, defendant filed a second action in Malheur County Circuit Court against plaintiffs here, most of whom were attorneys representing the defendants in Tyler v. Hartford Ins. Plaintiffs filed this action to enjoin further litigation by defendant against them in state court.

STANDARD

The court should not grant a motion to dismiss unless it appears beyond doubt that the plaintiff can prove no facts in support of the claim. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The court should construe the complaint in the light most favorable to the plaintiff. Rosen v.

Walters, 719 F.2d 1422, 1424 (9th Cir. 1983).

DISCUSSION

1. Personal Jurisdiction

Defendant is an Oregon resident and has been served. Personal jurisdiction is proper.

2. Subject Matter Jurisdiction

Under 28 U.S.C. § 1651, federal courts can "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Under 28 U.S.C. § 2283, a federal court may enjoin a state court proceeding "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." A proceeding in which a party moves for an injunction under section 2283 is ancillary to the initial case. Southwest Airlines v. Texas Int'l Airlines, 546 F.2d 84, 90 (5th Cir.), cert. denied, 434 U.S. 832 (1977).

Here, this case is ancillary to Tyler v. Hartford Ins.

Defendant contends that subject matter jurisdiction was improper in Tyler v. Hartford Ins. and that this lack of jurisdiction renders subject matter jurisdiction improper here. In Tyler v. Hartford Ins., subject matter jurisdiction was based on 28 U.S.C. § 1442. Section 1442 authorizes removal of a civil action in state court against any federal officer. Cook v. Peter Kiewit Sons Co., 775 F.2d 1030, 1034 (9th Cir. 1985), cert. denied, __U.S.__, 106 S.Ct. 2919 (1986). The only prerequisite to removal under section 1442 is that the action is against a federal officer or agency. Id. (citing IMFC Professional Serv. v. Latin Am. Home Health, 676 F.2d 152, 156 (5th Cir.1982). In Tyler v. Hartford Ins., defendant sued a Colorado federal district judge. Removal, and subject matter

jurisdiction, were proper. Defendant fully litigated this issue in the previous case, so he may not relitigate it now. See Durfee v. Duke, 375 U.S. 106, 112 (1963). Subject matter jurisdiction exists here because this action is ancillary to Tyler v. Hartford Ins. Defendant argues that an injunction is improper because the state court action plaintiffs seek to enjoin concerns different parties and claims than were litigated in Tyler v. Hartford Ins. In Wood v. Santa Barbara Chamber of Commerce, 705 F.2d 1515, 1524 (9th Cir. 1983), cert. denied, 465 U.S. 1081 (1984), the Ninth Circuit held that a district court could enjoin a state court proceeding even when the second lawsuit does not precisely repeat the earlier lawsuit. "The general pattern of litigation may be vexatious enough to warrant an injunction in anticipation of future attempts to

relitigate old claims." Id. Here, defendant is suing the attorneys who represented the defendants in Tyler v. Hartford Ins. For purposes of this motion to dismiss, the two cases are sufficiently similar to survive defendant's motion. Defendant has not shown any facts that demonstrate fraud on the face of the record.

CONCLUSION

Defendant's motion to dismiss is DENIED. DATED this 3 day of January, 1988. (signed) Owen M. Panner
United States district Judge

UNITED STATES DISTRICT COURT DISTRICT OF OREGON CIVIL MINUTES - GENERAL
Case No. 87-601PA Title Yturri, et al. v. Tyler Date 3/23/88 DOCKET ENTRY
Record of PTC: Due to defendant's failure to appear for this hearing and due to previous failure to appear before Judge Redden, the Court will proceed with the

PTC. Defendant's motion to vacate settings for PTC and trial settings DENIED. Defendant's motions to dismiss are duplicates of previous motions to dismiss and are DENIED for the same reasons as given before. Plaintiffs' motion to reschedule trial from Pendleton to Portland DENIED. Trial will be held in Pendleton on Monday, April 11 at 9 am. Defendant, because he is a pro se litigant, is allowed until April 4 to submit witness statements and exhibits and trial brief (to the Court and to opposing counsel.) In event defendant fails to submit this material, he will not be allowed to submit any at trial. Any sanctions will be reserved until such time as defendant has had time to give reason for his failure to appear today. The reasons given in his March 14 motion to reschedule are not sufficient. Plaintiffs' motion for summary judgment

DENIED.* *Defendant has 10 days to object to any of plaintiffs' exhibits. Objections should be noted as to reasons, particularly as to authenticity.

PRESENT: HON. OWEN M. PANNER, JUDGE

Iris R. Reilly, Deputy Clerk

Dale Ray, Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Randall Kester, Lawrence Blunck

ATTORNEYS PRESENT FOR DEFENDANTS: None

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON No. 87-601 PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant.

INJUNCTION AND JUDGMENT

This cause having come on regularly for trial on the 11th day of April, 1988 before the undersigned Judge of the above entitled court, plaintiffs Carl Burnham and Debbie F. Craig appeared in person, and all plaintiffs appeared by Lawrence P. Blunck, one of their attorneys; and defendant Donald E. Tyler did not appear in person or by an attorney, although he had made a general appearance in the case and had received timely notice of the trial date from the Court.

The Court, on April 11, 1988, having heard the testimony of the witnesses and having reviewed the trial exhibits and pleadings submitted by the parties, rendered an opinion finding in favor of plaintiffs and ordering that an injunction be issued; and said opinion and order were entered of record. On May____, 1988, the Court entered Findings of Fact and

Conclusions of Law and an Order Granting Permanent Injunction. Now, therefore, based upon said Findings of Fact, Conclusions of Law and Order Granting Permanent Injunction, it is hereby,

ORDERED, ADJUDGED AND DECREED that:

1. Defendant is hereby forever restrained and enjoined from litigating against plaintiffs the Malheur County, Oregon Circuit Court case of Tyler v. Hartford Insurance Group, et al (Civil No. 87-04-21572-L), except that he may continue to litigate the issue on appeal in that case regarding the issuance of sanctions against him by the Malheur County, Oregon Circuit Court, because that question has not been previously litigated in any State or Federal Court, so far as known to his Court.

Except as otherwise limited above, IT IS FURTHER ORDERED ADJUDGED AND DECREED that defendant is hereby forever

restrained and enjoined from relitigating or attempting to relitigate against plaintiffs, by commencing or filing in any Federal or State Court, any future action, complaint, or cause of action seeking adjudication of the factual and legal issues already adjudicated in any of the following cases:

a. Tyler v. Gaylor, et al, (Boulder County, Colorado, Civil No. 75 1687, and Adams County, Colorado, Civil No. 26884) (filed June 18, 1975);

b. Tyler v. Larsen and Larsen, (Adams County, Colorado, Civil No. 27045) (filed August 18, 1975);

c. Tyler v. marks, et al, (Weld County, Colorado, Civil No. 27861 (filed September 22, 1975);

d. Tyler v. Marks, et al, (Adams County, Colorado, Civil No. 28036) (filed September 23, 1975);

e. Tyler v. Gaylor's Food Store, Inc.,

et al, (Adams County, Colorado, Civil No. 28526) (filed July 6, 1976);

f. Tyler v. Waddell, (Adams County, Colorado, Civil No. 28646) (filed August 3, 1976);

g. Tyler v. Grayson, et al, (Adams County, Colorado, Civil No. 29014) (filed October 22, 1976);

h. Tyler v. Hartford Insurance Group, et al (Jefferson County, Colorado, Civil No. 77CV0782) (filed April 28, 1977);

i. Tyler v. Daniel, et al, (United States District Court for the District of Colorado, Civil No. 80-F-1305) (filed September 29, 1980);

j. Tyler v. Hartford, et al, (United States District Court for the District of Colorado, Civil No. 81-F-1287) (filed September 29, 1980);

k. Tyler v. Hartford, et al, (United States District Court for the District of Oregon, Civil No. 86-854-RE) (removed to

federal court July 3, 1986);

1. Tyler v. Hartford Insurance Group, et al, (Malheur County, Oregon Civil No. 87-04-21572-L) (filed April 29, 1987).

2. Plaintiffs have judgment against defendant for their costs and disbursments (sic) in the amount of $ _____.

3. Plaintiffs have judgment against defendant in the amount of $ to be determined as sanctions under FRCP 11.

4. Execution issue therefore.

8/15/88 (signed) Owen M. Panner District Court Judge Presented By: Randall B. Kester, Lawrence P. Blunck of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON No. 87-601 PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT,

MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PERMANENT INJUNCTION

The trial of this case was held before the Honorable Owen M. Panner on April 11, 1988. Plaintiffs were represented by lawrence P. Blunck, and defendant did not appear even though he had made a general appearance in the case and had received timely notice of the trial date from the Court.

The Court heard testimony from plaintiff's witnesses and has reviewed all of the trial exhibits, affidavits and pleadings submitted by the parties. The evidence is uncontradicted.

FINDINGS OF FACT

1. Plaintiffs are all Oregon lawyers or Oregon law firms who, with the

exception of Debbie F. Craig ("Craig"), represented various defendants in an earlier United States District Court case of Tyler v. Hartford Insurance Group, et al, Civil No. 86-854-RE ("Tyler v. Hartford"). Ms. Craig was herself a defendant in the Tyler v. Hartford proceeding and was represented by plaintiffs Frederic P. Roehr and Vergeer, Roehr and Sweek (collectively referred to as "Roehr").

2. In Tyler v. Hartford, plaintiffs Anthony Yturri, Cliff S. Bentz, Theresa J. Hutchens, Carl Burnham, Jr. and Yturri, Rose, Ebert & Bentz (collectively referred to as "Burnham") represented Hartford Insurance Group; plaintiffs Kenneth E. Roberts, Kenneth E. Roberts, P.C. and Schwabe, Williamson, Wyatt, Moore and Roberts (collectively referred to as "Roberts") represented Thomas L. Roberts, a Colorado lawyer; and plaintiffs James C.

Carter and Holmes, DeFrancq & Schulte, P.C. (collectively referred to as "Carter") represented various Colorado State Court Judges.

3. Defendant Tyler, who lives in Malheur County, Oregon, is both a physician and a lawyer. He has been licensed to practice law in the States of Colorado and California and, before the United States Supreme Court (Tr.Ex. 13, p. 32). He should therefore be well able to understand the nature of legal proceedings. He is not a typical pro se litigant.

4. The Tyler v. Hartford case was originally filed by defendant Tyler in Malheur County, Oregon Circuit Court (Civil No. 86-06-20969-L), and in his complaint and amended complaint, Tyler alleged that pursuant to a conspiracy, Hartford Insurance Group, Ms. Craig, Thomas Roberts, various Colorado judges

and others, intentionally interfered with his practice of medicine, acted outrageously which caused him to suffer severe emotional distress, and violated 42 U.S.C. §1983. Based upon the petition of as Federal Judge who was also named as a defendant (but whom plaintiffs herein did not represent), the case was removed to the Federal District Court for the District of Oregon. Tyler filed a motion for remand but the motion was denied on or about October 16, 1986 (Civil No. 86-854-RE).

5. The present plaintiffs, on behalf of their then clients, filed various motions to dismiss; and Judge Redden, who had been assigned to hear the case, dismissed all of Tyler's claims. The judgment which was entered recited that Tyler's action was "dismissed on the merits." The judgment was signed on March 9, 1987. No appeal was taken (Civil No.

86-854-RE).

6. On April 29, 1987, Tyler filed a complaint in Malheur County, Oregon Circuit Court (Civil No. 87-04-21572-L) against plaintiffs and, with the exception of some of the Colorado judges, the parties whom plaintiffs had represented in the Tyler v. Hartford lawsuit. In the complaint, Tyler alleged that plaintiffs and their clients, as well as Judge Redden, conspired, by obstructing justice and fraudulently using legal proceedings, to perpetuate or advance the alleged conspiracy that was supposedly the basis of the Tyler v. Hartford case. Tyler sought special damages of $600,000,000.00, general damages of $20,000,000.00, a trebling of the special and general damages, exemplary damages of $1,000,000,000.00 from Hartford Insurance Group, and exemplary damages of $5,000,000.00 from each of the plaintiffs

herein.

7. Plaintiffs filed this action on June 8, 1987 to enjoin Tyler from pursuing the Malheur County, Oregon Circuit Court lawsuit (Civil No. 87-04-21572-L) and to enjoin him from pursuing any other actions against them in state or federal court to the extent that such actions are based on the legal or factual issues presented in the Tyler v. Hartford case.

8. In this proceeding, Tyler has filed a veritable mountain of paperwork. he has filed, among other things, a motion to disqualify the Honorable James A. Redden, two motions to dismiss, a motion to disqualify the Honorable Owen M. Panner, a motion to amend order dated January 3, 1988, a motion to vacate settings for pretrial conference and trial and a motion to stay proceedings. He has also filed in the Court of Appeals for the Ninth Circuit three petitions for writs of mandamus

and/or prohibition, a motion to supplement petition for writ of mandamus and/or prohibition, two motions to stay proceedings in the district court, a petition for appeal of interlocutory order, a motion to order stay of proceedings, and a motion to stay proceedings pending determination of the interlocutory appeal or petition for writ of mandamus. In addition, he filed motions for a restraining order and injunction in both the Oregon Court of Appeals and Oregon Supreme Court, all for the purpose of seeking to stop the proceedings in this case.

9. All of Tyler's motions or pleadings described above, whether filed in the Federal District Court, the Court of Appeals for the Ninth Circuit, the Oregon Court of Appeals or the Oregon Supreme Court, have been denied or rendered moot by the denial of other motions. When the

Ninth Circuit denied Tyler's third petition for a writ of mandamus, it admonished him that it may impose sanctions if any further petitions were found to be frivolous.

10. Before commencing the Tyler v. Hartford and the pending Malheur County, Oregon Circuit Court lawsuits, Tyler had filed ten other lawsuits, some in various counties in Colorado State Court and some in the Federal Court for the District of Colorado, all of which were based upon the identical or similar set of facts or circumstances which form the basis of the Tyler v. Hartford and the pending Malheur County, Oregon Circuit Court lawsuits. Those ten lawsuits are:

1. Tyler v. Gaylor, et al, (Boulder County,Colorado, Civil No. 75 1687, and Adams County, Colorado, Civil No. 26884) (filed June 18, 1975);

2. Tyler v. Larsen and Larsen, (Adams

County, Colorado, Civil No. 27045) (filed August 18, 1975);

3. Tyler v. Marks, et al, (Weld County, Colorado, Civil No. 27861) (filed September 22, 1975);

4. Tyler v. Marks, et al, (Adams County, Colorado, Civil No. 28036) (filed September 23, 1975);

5. Tyler v. Gaylor's Food Store, Inc., et al, (Adams County, Colorado, Civil No. 28526) (filed July 6, 1976);

6. Tyler v. Waddell, (Adams County, Colorado, Civil No. 28646) (filed August 3, 1976);

7. Tyler v. Grayson, et al, (Adams County, Colorado, Civil No. 29014) (filed October 22, 1976);

8. Tyler v. Hartford Insurance Group, et al, (Jefferson County, Colorado, Civil No. 77CV0782) (filed April 28, 1977);

9. Tyler v. Daniel, et al, (United States District Court for the District of

Colorado, Civil No. 80-F-1305) (filed September 29, 1980);

10. Tyler v. Hartford, et al, (United States District Court for the District of Colorado, Civil No. 81-F-1287) (filed September 29, 1980).

11. In the dozen lawsuits which Tyler has filed, he has sued numerous doctors, nurses, a hospital, a hospital association, various insurance companies, a medical society, numerous Colorado and Oregon lawyers, members of the Colorado State judiciary, a federal court judge from the District of Colorado, three federal court judges from the Court of Appeals for the Tenth Circuit, and a host of other parties, on substantially the same alleged facts. His conduct in filing and litigating the pending Malheur County, Oregon Circuit Court action, notwithstanding adverse court rulings on the same or similar issues in prior cases,

was vexatious, without probable cause, wanton and in bad faith and for purposes of harassment.

The award of attorney's fees as sanctions by Judge Jackson in the pending Malheur County, Oregon Circuit Court action and by Judge Redden in Tyler v. Hartford in this court, conclusively determined that said actions were filed wantonly, in bad faith, without probable cause and for purposes of harassment.

CONCLUSIONS OF LAW

1. Personal jurisdiction is proper because Tyler is an Oregon resident, he has been served and he has made a general appearance in the case. Subject matter jurisdiction exists here because this action is ancillary to Tyler v. Hartford (Civil no. 86-854-RE).

2. The Court is cognizant of the fact that federal courts should exercise great caution in enjoining state court

proceedings and in enjoining a party from litigating his grievances. The Court also recognizes, however, that under 28 USC § 1651, a federal court has the authority to "issue all writs necessary or appropriate in aid of (its) respective jurisdiction() and agreeable to the usages and principles of law." Moreover, under 28 USC § 2283, a federal court may enjoin a state court proceeding "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." And, a federal court may enjoin a state court proceeding even though the state court lawsuit does not precisely repeat the earlier lawsuit. Wood v. Santa Barbara Chamber of Commerce, 705 F2d 1515, 1524 (9th Cir.1983), cert. denied, 465 US 1081 (1984).

3. It is clear from the evidence presented to the Court that the substance of the twelve lawsuits which Tyler has

filed is the same. He is simply attempting to relitigate, over and over, the same matters which were previously litigated. His conduct threatens to make a complete mockery of the judicial process and cannot be tolerated.

4. The Court concludes that Parsons Steel, Inc. v. First Alabama Bank, et al., 474 US 518 (1986) does not preclude the relief which plaintiffs seek, because plaintiffs moved promptly to enjoin the defendant. The pending Malheur County, Oregon Circuit Court action was filed on April 29, 1987 and the complaint in this case was filed on June 8, 1987.

5. It is also the conclusion of this Court that the judgments entered in the various cases which Tyler has filed, particularly the judgment entered by Judge Redden on March 9, 1987, in Tyler v. Hartford, are res judicata as to the legal and factual issues attempted to be raised

in the pending Malheur County, Oregon Circuit Court action. Restatement (Second), Judgments § 119. The Court further concludes that in order to protect or effectuate the judgment of this Court which was rendered in Tyler v. Hartford, an injunction should issue, as hereinafter described.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that an injunction be issued, forever restraining and enjoining defendant Donald Tyler from litigating against plaintiffs the Malheur County, Oregon Circuit Court case of Tyler v. Hartford Insurance Group, et al (Civil No. 87-04-21572-L), except that he may continue to litigate the issue on appeal in that case regarding the issuance of sanctions against him by the Malheur County, Oregon Circuit Court, because that

question has not been previously litigated in any State or Federal Court, so far as known to this Court.

Except as otherwise limited above, IT IS FURTHER ORDERED that defendant Donald Tyler be forever restrained and enjoined from relitigating or attempting to relitigate against plaintiffs, by commencing or filing in any Federal or State Court, any future action, complaint, or cause of action seeking adjudication of the factual and legal issues already adjudicated in any of the following cases:

1. Tyler v. Gaylor, et al, (Boulder County, Colorado, Civil No. 75 1687, and Adams County, Colorado, Civil No. 26884) (filed June 18, 1975);

2. Tyler v. Larsen and Larsen, (Adams County, Colorado, Civil No. 27045) (filed August 18, 1975);

3. Tyler v. Marks, et al, (Weld County, Colorado, Civil No. 27861) (filed

September 22, 1975);

4. Tyler v. Marks, et al, (Adams County, Colorado, Civil No. 28036) (filed September 23, 1975);

5. Tyler v. Gaylor's Food Store, Inc., et al, (Adams County, Colorado, Civil No. 28526) (filed July 6, 1976);

6. Tyler v. Waddell, (Adams County, Colorado, Civil No. 28646) (filed August 3, 1976);

7. Tyler v. Grayson, et al, (Adams County, Colorado, Civil No. 29014) (filed October 22, 19760;

8. Tyler v. Hartford Insurance Group, et al, (Jefferson County, Colorado, Civil No. 77CV0782) (filed April 28, 1977);

9. Tyler v. Daniel, et al, (United States District Court for the District of Colorado, Civil No. 80-F-1305) (filed September 29, 1980);

10. Tyler v. Hartford, et al, (United States District Court for the District of

Colorado, Civil No. 81-F-1287) (filed September 29, 1980);

11. Tyler v. Hartford, et al, (United States District Court for the District of Oregon, Civil No. 86-854-RE) (removed to federal court July 3, 1986);

12. Tyler v. Hartford Insurance Group, et al, (Malheur County, Oregon Civil No. 87-04-21572-L) (filed April 29, 1987).

IT IS FURTHER ORDERED that the Court reserves ruling on the question of whether sanctions should be awarded against the defendant under FRCP 11, and plaintiffs are allowed until April 21, 1988 to file a motion for Rule 11 sanctions with appropriate supporting memoranda and/or affidavits. The defendant is allowed until May 2, 1988 to file a respose (sic), and if the Court deems necessary, a hearing for argument may then be scheduled. Dated this 15 day of Aug, 1988 (signed) Owen M. Panner United States

District Court Judge Presented by: Randall B. Kester, Lawrence P. Blunck of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Civil No. 87-601-PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendants.

ORDER Plaintiffs brought this action to enjoin defendant Donald Tyler from litigating certain claims against them in state or federal court. At trial on April 11, 1988, I granted an injunction. Plaintiffs now request Rule 11 sanctions against defendant. I grant, in part, and deny, in part, plaintiffs' motion.

STANDARDS

Federal Rule of Civil Procedure 11 provides: The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may

include an order to pay to the other party or parties that amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The court must award sanctions when a litigant violates Rule 11. Mir v. Little Co. of Mary Hospital, 844 F.2d 646, 652 (9th Cir.1988). A document is frivolous when no competent attorney could believe it is well grounded in fact and warranted by law. Id. The court determines frivolousness by an objective good faith standard of reasonableness under the circumstances. Pipe Trades Council v. Underground Contractors Ass'n, 835 F.2d 1275, 1279 (9th Cir.1987).

DISCUSSION

Plaintiffs contend that fifteen of the documents filed by defendant violate Rule 11. Defendant opposes the motion for sanctions. Defendant represents himself

and has been admitted to the bars of Colorado, California, and the Supreme Court of the United States.

Defendant argues that this court lacks subject matter jurisdiction. I adhere to my holding that subject matter jurisdiction is proper.

I agree with defendant that this court should not award sanctions for papers filed in the Ninth Circuit. Cf. Hurd v. Ralphs Grocery Co., 824 F.2d 806, 808 (9th Cir.1987) (district court cannot award sanctions for papers filed in state court). I deny plaintiffs' motion to impose sanctions for documents not filed in this court.

I deny plaintiffs' motion for sanctions regarding defendant's two motions to dismiss. When a motion contains frivolous arguments, but is not itself frivolous, sanctions are not warranted. See Golden Eagle Distrib. Corp. v. Burroughs

Corp., 801 F.2d 1531, 140-41 (9th Cir.1986). Although both motions to dismiss contained frivolous arguments, the motions themselves were not frivolous. The second motion did duplicate many of the arguments in the first motion, but it included several new arguments.

I also deny plaintiffs' motions for sanctions regarding defendant's motions to disqualify Judge James A. Redden (Docket No. 6) and to stay (Docket No. 9). The case was transferred from Judge Redden a few days before defendant filed these motions, and it is not clear that defendant knew of the transfer.

I now address the documents that violate Rule 11.

1. Objection to any Acts by Judge Panner (Docket No. 11)

Defendant filed this motion on July 15, 1987, arguing that Judge Redden lacked jurisdiction to assign another judge to

preside over the case and that, therefore, subject matter jurisdiction was lacking. I find this motion frivolous and filed to delay. There was no basis in fact or law for objecting to the transfer of a case from one judge in this district to another judge.

Plaintiffs' attorney Lawrence P. Blunck spent .80 hours on this motion. I find .80 hours justified and Blunck's hourly rate of $70 reasonable. I award $56 in sanctions.

2. Motion to Disqualify Judge Panner (Docket No. 17)

Defendant moved to disqualify me, alleging that I was biased because I serve on the same court as Judge Redden. This motion was ultimately denied by Judge Malcolm Marsh. As Judge Marsh's order explains, this motion was legally insufficient. Yturri v. Tyler, No. 87-601, slip op. (D.Or. Feb. 17, 1988).

Sanctions are warranted because the motion had no basis in fact or law.

Blunck spent .30 hours responding to this motion. I award sanctions of $21.

3. Motion to Stay Pending Writ or Petition (No. 27)

After I denied defendant's first motion to dismiss, defendant moved for a stay pending the Ninth Circuit decision on his writ of mandamus regarding the denial. I agree with plaintiffs that this motion had no legal basis and was filed for delay.

4. Motion to Amend Order Denying Motion to Dismiss (No. 28)

Defendant moved to amend the order denying the motion to dismiss so that defendant could file an interlocutory appeal. This motion was also frivolous and filed for delay. Blunck spent .40 hours on motions 27 and 28. I award sanctions of $28.

5. Motion to Vacate Settings (No. 44)

On March 14, 1988, defendant moved to vacate the pretrial conference and trial settings. The pretrial conference was set for March 23, 1988, and trial was set for April 11, 1988. The order setting these dates was filed in December 1987. Defendant argued that this motion was justified because of lack of subject matter jurisdiction, the need for more time if his second motion to dismiss was denied, and other grounds. However, defendant should have moved for a continuance much earlier if he had a conflict with the pretrial or trial dates. Defendant did not appear at either hearing. I agree with plaintiff that this motion had no legal or factual basis, and was filed for delay.

Blunck spent 1.4 hours on this motion, and Randall Kester spent .9 hours on it at $80 an hour. The amount of time and rates are reasonable. I award $170 in sanctions

for this motion.

CONCLUSION

Plaintiffs' motion for sanctions is granted in part and denied in part. Plaintiffs are awarded a total of $275 in sanctions. IT IS SO ORDERED. DATED this 14 day of September, 1988. (signed) Owen M. Panner United States District Judge

COMPLAINT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON no. 87-601 RE ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, v. DONALD E. TYLER, M.D., Defendant. COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs allege for their complaint as follows:

1.

COMPLAINT FOR INJUNCTIVE RELIEF

This is an action, pursuant to 28 U.S.C. §§ 2283, for a permanent injunction to bar defendant from proceeding with a complaint against the plaintiffs for alleged "Unlawful Interference With And Obstruction of Justice And By Fraudulent Use Of Legal Proceedings Pursuant to Conspiracy"; and/or from commencing, maintaining or prosecuting any future actions against plaintiffs in Oregon state courts when such action is based on any alleged conspiracy that has already been dismissed on the merits in United States District Court for the District of Oregon.

2.

PARTIES

Plaintiffs Anthony Yturri, Cliff S. Bentz, Teresa J. Hutchens, Carl Burnham,

Jr., Debbie F. Craig, Frederic P. Roehr, Kenneth E. Roberts, James C. Carter, and Kenneth E. Roberts, P.C., are all individuals who have been named and joined as defendants in a civil action entitled Tyler v. Hartford, et al, Case No. 87-04-21572-L, which was filed by defendant against plaintiffs in the Circuit Court of the State of Oregon for the County of Malheur on April 29, 1987.

3.

Plaintiffs Schwabe, Williamson, Wyatt, Moore & Roberts and Vergeer, Roehr & Schulte, P.C., and Yturri, Rose, Burnham, Ebert & Bentz are Oregon partnerships who have been named and joined as defendants in a civil action entitled Tyler v. Hartford, et al, Case No. 87-04-21572-L, which was filed by defendant against plaintiffs in the Circuit Court of the State of Oregon for the County of Malheur on April 29, 1987.

4.

Defendant Donald E. Tyler, M.D., is the sole named plaintiff in the case described in paragraphs 2 and 3 above.

JURISDICTION AND VENUE

5.

THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 1331 AND § 2283.

6.

Venue in this judicial district is proper under 28 U.S.C. § 1391(b) because the claim arose in Oregon and because defendant Tyler is a resident of the State of Oregon.

FACTUAL BACKGROUND

7.

On or about June 3, 1986, Donald E. Tyler, M.D., (defendant in the present action) commenced a civil action entitled Tyler v. Hartford, et al, Case No. 86-06-20969-L, by filing a complaint in the Circuit Court of the State of Oregon for

the County of Malheur. Dr. Tyler joined a number of defendants under a conspiracy theory. Some of these defendants are now the plaintiffs in the present action.

8.

On or about July 3, 1986, the defendants in the action described in paragraph 7 above, filed a petition for removal in United States District Court for the District of Oregon in Portland, Oregon. Removal was granted that same day.

9.

On or about August 8, 1986, Dr. Tyler filed a motion to remand to state court. On or about October 17, 1986, Judge James A. Redden denied Dr. Tyler°s motion.

10.

On or about December 19, 1986, all parties in the action described in paragraphs 7-9 above were advised by way of minute order that a hearing on certain motions filed by the defendants (some of

whom are plaintiffs herein) was scheduled for February 6, 1987.

11.

At the time of the hearing Dr. Tyler, who had represented himself throughout the case, failed to appear and could not be reached by telephone. Judge Redden granted the motions to dismiss filed by Thomas L. Roberts, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., Howard I Bobbitt, Hartford Insurance Group, Debbie Freepons Craig, Donald P. Smith, Jr., A.M. Kelley, Edwin G. Ruland, Philip E. Roan, Harlan R. Bockman, Marvin W. Foote, and Anthony F. Vollack. Motions to Withdraw Appearance were granted for Dean Johnson, Mac V. Danford, Harry S. Silverstein, Jr., Judge Tursi, E.P. Van Cise, Jean J. Jacobucci, and William Erickensen. A Motion for Summary Judgment was granted in favor of Sherman G. Finesilver, Oliver Seth, Monroe G. McKay

and James K. Logan. Judge Redden further ordered that the action be dismissed as against those defendants who had not been served.

12.

On or about March 9, 1987, the Clerk of the United States District Court entered Judgment in favor of the defendants (some of whom are plaintiffs herein). The Judgment stated, in part, that "plaintiff take nothing" and that "the action is dismissed on the merits." Defendant, Dr. Tyler, is therefore collaterally estopped from relitigating the issues determined in the prior action.

13.

On or about April 29, 1987, Dr. Tyler filed the complaint described in paragraphs 2 and 3 above.

14.

The complaint filed by Dr. Tyler on or about April 29, 1987, in the Malheur

County Circuit Court pleads a cause of action based on an alleged conspiracy theory, which conspiracy theory has already been "dismissed on the merits" by Order of United States District Court Judge James A. Redden. (See paragraphs 11 and 12 above. Defendant should be barred under the doctrine of res judicata from litigating the same claim.

CLAIM FOR PERMANENT INJUNCTION

15.

Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 14 above as if set forth in full herein.

16.

Plaintiffs respectfully request that, pursuant to 28 U.S.C. § 2283, defendant be permanently enjoined from maintaining Civil Action No. 87-04-21572-L in the Oregon State Court system, from commencing, maintaining or prosecuting any

future actions against plaintiffs in Oregon State Courts if such actions are based on the alleged conspiracy theory that has already been "dismissed on the merits" by Order of United States District Court Judge James A. Redden.

WHEREFORE, Plaintiffs pray that defendant be permanently enjoined from filing and/or pursuing any actions or claims against plaintiffs, including but not limited to the pending Malheur County State Court action, regarding those legal theories and claims previously asserted by defendant in the action described in paragraphs 7 through 12 above; for the reasonable costs, attorneys' fees and expenses incurred by plaintiffs in bringing this action; and for such other and further relief as the Court may deem just and proper.

COSGRAVE, KESTER, CROWE, GIDLEY & LAGESEN

By (signed) Lawrence P. Blunck, OSB#84178

Austin W. Crowe, Jr., OSB#65028
Suite 901, The 1515 Building, 1515 S.W. Fifth Avenue, Portland, Oregon 97201-5476
Telephone: (503)-227-3711

TRANSCRIPT OF TRIAL,

(as modified by motion of plaintiffs. Original is lined over, words added are capitalized and underlined.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON CV NO. 87-601 PA

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ, Plaintiffs, vs. DONALD E. TYLER, M.D., Defendant.

April 11, 1988 Pendleton, Oregon

TRANSCRIPT OF PROCEEDINGS BEFORE: The Honorable Owen M. Panner, Chief Judge, United States District Court.

APPEARANCES: Mr. Carl Burnham, and Mr. Lawrence P. Blunck, Ms. Debbie F. Craig, Attorneys at Law, appearing in behalf of the Plaintiffs. DALE A. RAY, OFFICIAL COURT REPORTER 225 U.S. COURTHOUSE, PORTLAND, OREGON 97205 503-221-3113

WITNESS INDEX

FOR THE PLAINTIFF:	Direct	Cross	ReD	ReX
Carl Burnham	3			
Debbie F. Craig	11			

INDEX OF EXHIBITS

FOR THE PLAINTIFFS :	Marked	Offered	Rec'd
~~5 through 8~~	~~16~~	~~16~~	
~~1 through 13~~	~~17~~		
~~38 through 39~~	~~13~~		
EXHIBITS 1-13	2	2	
EXHIBIT 13, PAGES 27-37	9	9	
EXHIBIT 13, PAGES 38-39	13	13	
EXHIBIT 5, PAGES 5-8	16	16	

(Monday, April 11, 1988, 9:00 a.m.)

PROCEEDINGS

THE CLERK: Civil 87-601, Anthony Yturri, et al., vs. Donald E. Tyler.

THE COURT: All right. This is the time set for the trial in this matter. It's my understanding that the Marshal has searched the area and the defendant is not in the courtroom or the immediate surroundings; is that correct, Mr. Burnham?

MR. BURNHAM: Yes, sir.

THE COURT: All right, we will proceed with the trial. He was notified of the trial, and we will proceed. I am prepared to receive the exhibits that have been offered and that is Plaintiffs' Exhibits 1 through 13, without objection, those appear to be appropriate and I will receive Exhibits 1 through 13.

(Plaintiff's Exhibits 1 through 13 received.)

You may call your first witness, Mr. Burnham.

MR. BLUNCK: My name is Larry Blunck and I'm representing Mr. Burnham in the case. I would LIKE TO make a brief statement, but I won°t recite any facts. I think those are all in the record.

THE COURT: I have THE benefit of the motions AND the affidavits that have been filed in this case so I don't think it is really necessary.

MR. BLUNCK: All right, we will call Mr. Carl Burnham then, Your Honor.

CARL BURNHAM, was duly sworn.

THE CLERK: State your full name for the record and spell your last name.

THE WITNESS: Carl Burnham, Junior, B-u-r-n-h-a-m.

DIRECT EXAMINATION

BY MR. BLUNCK:

Q Mr. Burnham, where do you live?

A Ontario, Oregon.

Q How long have you lived there?

A 24 years.

Q What is your occupation?

A I'm an attorney.

Q Where did you attend law school?

A University of Oregon.

Q When did you graduate from law school?

A 1964.

Q In what year did you pass the bar?

A September of 1964.

Q And you are licensed to practice in Oregon?

A Yes, I am.

Q Are you a member of a law firm?

A Yes, sir.

Q What firm is that?

A Yturri, Rose, Burnham, Ebert & Bentz.

Q Where is that firm located?

A Ontario, Oregon and Fruitland, Idaho and Baker, Oregon.

Q So what is the nature of your practice?

A My practice is limited to civil litigation.

Q Does that include litigation in both State and Federal Court?

THE COURT: The Court is familiar with Mr. Burnham's background and qualifications. You may proceed.

MR. BLUNCK: Thank you, Your Honor.

Q (By Mr. BLUNCK) Mr. Burnham, have you had previously HAD time to review Trial Exhibits 1 through 13?

A Yes, I have.

Q Would you describe for us briefly what those trial exhibits consist of?

A They consist of complaints in previous litigation filed by Mr. Tyler.

Q And are those lawsuits that he's filed in both Colorado and Oregon?

A Yes, sir.

Q And that is in State and Federal Court in both Colorado and Oregon?

A Yes, sir, I think the federal court

suit was originally filed in State Court then removed. All right.

MR. BLUNCK: Your Honor, I don't think we will have Mr. Burnham recite any of the ~~statements~~ FACTS about the cases and so forth.

THE COURT: It's not necessary. The exhibits will be received.

MR. BLUNCK: All right, thank you.

Q (By Mr. Blunck) One matter, Mr. Burnham, which we ought to clarify is the status of the Malheur County action that has been pending. Could you explain to us please the status of that case?

A Judge Jackson dismissed the complaint as being frivolous, **(TYLER NOTE -- PERJURY--DISMISSAL WAS BY RES JUDICATA AND COLLATERAL ESTOPPEL, copy dismissal A-392)** Mr. Tyler then appealed it to the Oregon Court of Appeals. The action has been briefed by both parties and is

now pending. There is also an appeal which is awaiting the briefs of the respondent regarding the attorney fees that Judge Jackson ordered for filing a frivolous suit.

Q Thank you. With respect to an earlier Malheur action that was removed to Federal Court that was before Judge Redden, specifically who were you representing in that lawsuit?

A Representing Hartford Insurance Company.

Q Were there others to be involved representing other parties as well?

A Yes, there were.

Q Could you tell us as well as you know?

A Well, counsel ~~Rob Senior~~ KEN ROBERTS was retained to represent all the Colorado lawyers who had previously been involved in litigation with Mr. Tyler; Fred Roehr represented Mrs. Craig. The law firm I believe, Jim

Carter of Holmes, DeFrancq and Schulte was the lawyer representing the State Court judges. In ~~Colorado~~ ADDITION there was an Attorney General representing the Board of Medical Examiners, and the individual doctors who had been sued who were on that board in 1965, and there was a U.S. Attorney representing the Federal judges who were sued.

MR. BLUNCK: Your Honor, I would ask the Court to take judicial notice that the attorneys were all attorneys licensed to practice law in Oregon.

THE COURT: I will.

MR. BLUNCK: Thank you.

Q (By Mr. Blunck) Mr. Burnham, either during or after the case that was before Judge Redden did Dr. Donald Tyler ever threaten any type of legal action against you or members of your firm?

A Yes, I guess until he turned us all in to the Oregon State Bar Grievance procedure, then he threatened the bar and I guess all the attorneys as conspirators with some type of legal action which has not been filed, to my knowledge.

MR. BLUNCK: Could we ask that Trial Exhibit 13, Pages 28 and 27 be shown to Mr. Burnham as well as Exhibit 13, Pages 32 and 33? Your Honor, those are documents we have submitted this morning.

(Bailiff handing)

Q (By Mr. Blunck) Mr. Burnham, would you identify those documents for us?

A Well, Exhibit 13 is a complaint by Donald Tyler to the Grievance Committee of the Supreme Court of the State of Oregon?

Q An who does that complaint relate to that was filed with the Grievance

Committee?

A The conduct of Charles H. Turner, U.S. Attorney; Judith Kobbervig, Assistant U.S. Attorney; David Frohnmayer, State Attorney General, and Tom K. Elden.

Q Excuse me, does the document list the various parties?

A And all the other parties, yes.

Q Okay, thank you.

Q You can go through and identify the documents for us, please.

A They are all marked Exhibit 13.

Q They have the page exhibit NUMBER.

A Exhibit ~~1327~~ 13, PAGE 27 is the document I just described; Exhibit ~~1329~~ 13, PAGE 29 is a letter from the Oregon State Bar to Mr. Tyler; Exhibit 13 Page 3 32 is a letter from Dr. Tyler to the bar counsel. Exhibit No. 13, Page 34, is a letter that was sent to my partner, Tony Yturri, and apparently involves a dispute between Dr. Tyler

and the U.S. Secret Service agent over something of importance. I think and is that last document, a letter, Mr. Tyler sent to somebody but a copy to Mr. Yturri?

Q Can you tell us --

A Yes.

Q Can you tell us which letter Dr. Tyler has threatened to --

a well there in ~~34~~ 35 is such a letter that Dr. Tyler sent to Tony Yturri at his home, threatening litigation if myself and my associates didn°t stop defending the suit he had filed. And Exhibit 13, Page 36, is a letter that Dr. Tyler sent to Dr. Kostel, a physician in Baker, Oregon describing his history of difficulties with the Medical Association, Board of Examiners dating back to 1965 and threatening Dr. Kostel with a suit if he did not respond to the demand made by Dr.Tyler.

Q Thank you, Mr. Burnham. Are those documents a true and accurate copy of the documents they purport to be to the best of your knowledge?

A Yes, they are.

MR. BLUNCK: We will offer them as exhibits, Your Honor.

THE COURT: They will be received.

(Plaintiffs' Ex. 13, PAGES 27-37 received)

Q (By Mr. Blunck) Mr. Burnham, could you explain to us please what type of work you did when you were representing Hartford Insurance in the action before Judge Redden.

A We were initially hired I believe in June of 1986 to represent Hartford Insurance Company. We made an investigation of the background of the suit, since the exhibit that came with the complaint disclosed that county actions had been filed of a similar nature in Colorado, I contacted the

other, Hartford personnel to get a background on the suit. We then filed motions to dismiss in the State Court on grounds of collateral estoppel.

(TYLER NOTE --PERJURY, MOTION WAS TO DISMISS WAS ON OTHER GROUNDS INCLUDING FOR LACK OF PERSONAL JURISDICTION)

There is no jurisdiction in Oregon. An amended complaint was filed shortly thereafter,

(TYLER NOTE -- PERJURY AND FRAUD ON THE FACE OF THE RECORD AS TO JURISDICTION OF THE PRIOR CASE AND THIS CASE. The amended complaint was filed prior to any responsive pleadings or motions. PROOF in Register of Actions appended to DEFENDANT'S MOTION TO STAY JUDGMENT AND SUSPEND INJUNCTION PENDING APPEAL, A-398, Excerpts of Record, Page E-166. PERJURY TO PROVIDE JUDGE PANNER COLOR OF JURISDICTION WITHOUT THE AMENDED COMPLAINT BEING IN FEDERAL COURT IN THE PRIOR CASE.)

essentially the same point of view alleged in Oregon conduct or Oregon conspiracy, the case was then removed by the U.S. Attorney's office to Federal Court in front of Judge Redden. We filed a motion to dismiss in Judge Redden's court which was granted after a number of legal skirmishes regarding the seven defendants and the validity of jurisdiction of Federal Court.

Q Thank you. Mr. Burnham, the records that are on file in the case that Judge Redden handled, the court and has taken judicial notice of those proceedings, and from your participation in that case, and the work that the other plaintiffs in this case namely Mr. Roehr, Mr. Carter, Mr. Roberts and members of their firms did do this also, did they do similar type of work such as filing motions and that sort of thing?

A Yes, they did, though we did most of

work, it was through judicial efficiency since all the complaints seemed to be the same, we filed most of the documents then, they just relied on the material that we filed by and enlarge. That's not completely true, but by and large.

Q In your opinion, Mr. Burnham, is the type of work you just described to us something a reasonable and prudent lawyer would do on behalf of his client?

A Yes.

Q Was this work you and the other attorneys performed related to the ~~expense~~ REPRESENTATION of ~~the~~ YOUR clients?

A It was.

MR. BLUNCK: I have no further questions, Your Honor.

THE COURT: All right. You may step down. Any further witness, Mr. BLUNCK?

MR. BLUNCK: Yes, we call Miss Debbie Craig.

DEBBIE CRAIG, was duly sworn.

THE CLERK: State you full name for the record and spell your last name.

THE WITNESS: Debbie Frepons, F-r-e-p-o-n-s Craig, C-R-A-I-G.

DIRECT EXAMINATION

BY MR. BLUNCK:

Q Miss Craig, Where do you live?

A I live outside of Portland, Oregon.

Q How long have you lived there?

A nine years.

Q Where did you go to school?

A I graduated from the University of Denver?

Q In what year?

A In 1978.

Q Are you licensed to practice law in Oregon?

A Yes, I am.

Q When did you get licensed here?

A 1978.

Q And what is the nature of your practice?

A I'm a solo practitioner specialize -- specializing in family law.

Q Miss Craig, when did you first have any dealings or involvement with the defendant, Donald Tyler?

A It would have been in December of 1978, I was clerking the Colorado State Court of Appeals. I was serving Judge Edwin Ruland and I was the bailiff in the courtroom when Mr. Tyler made his oral argument in the case of Donald E. Tyler vs. Marks. In one of the exhibits up there is Trial Exhibit --

THE COURT: Which court was that case in?

THE WITNESS: That was in the Colorado State Court of Appeals.

Q (By Mr. BLUNCK) That was one of the cases that Donald Tyler had filed in Colorado?

A That's correct.

Q Could you identify for us, please,

Trial Exhibit 13, Pages 38 and 39.

A Pages 38 and 39 are copies of a memorandum which I prepared for the Colorado State Court of Appeals to the Chief Clerk who was Mac Danford, and I prepared this on May 23, 1979 when I was about to leave the Court, I served one year and I was leaving at the end of May. That's my recollection of my contact with Donald Tyler.

Q Is that document a true and accurate copy of the document it purports to be?

A Yes.

Mr. BLUNCK: Your Honor, we offer Trial Exhibit 13 pages 38 and 39.

THE COURT: All right. It will be received. What exhibit is that?

Mr. BLUNCK: Exhibit 13, pages 38 to 39.

THE COURT: All right.

(PLAINTIFFS' EXHIBIT 13, PAGES 38-39 RECEIVED.)

Q (By Mr. BLUNCK) Mrs. Craig, were you involved at all in writing an opinion for the ~~Oregon~~ COLORADO Court of Appeals?

A I heard oral arguments in December of 1978. Judge Ruland for whom I worked was assigned to write the opinion in that case and as a clerk for him I checked out all the necessary depositions, exhibits and whatnot, took those documents to my office which was a little cubicle in this suite of offices and kept those documents there for approximately two months as we went through the documents in preparation for writing an opinion. It was a very voluminous set of documents and they were in a very large box, they wouldn't fit on my desk so it was stored right next to my desk. On Valentine's Day I started to work on the case and noticed the entire portion had been missing and discovered the janitor at night threw the exhibits

away. The clerk, Mac Danford and I went to the garbage service, eventually went to a landfill, and of course we couldn't find a box of documents in the landfill for the city of Denver. So we were unable to go ahead and the Court started to reconstruct all the exhibits we were able -- and depositions, we were able to obtain a lot of the information from metro area Denver attorneys, there were some items we were unable to obtain and Dr. Tyler was then living in Ontario, Oregon. I was going to travel to a family wedding in Portland, Oregon and the Court decided since I was going to be in Oregon I might as well go to Ontario, Oregon and copy the documents missing from the Tyler file. On April 9, I drove from Portland, Oregon to Ontario to Dr. Tyler's home. He prepared the necessary documents. The Court had written ahead of time and told him what we needed. He went with me to a legal book

and stationery store in Ontario where I spent the better part of an afternoon xeroxing documents. He was with me the entire time except for about half-hour where he left and at the end of the day I took my bundle of information that I had from his files, then went to Portland, flew back to Denver. The Court used that information plus the information we had gotten in Colorado to reconstruct the file and eventually the order was issued from the Court certifying that the file was complete and an opinion was issued in this case. After I left the court I was provided with a copy of the opinion. The judge mailed it to me probably in June or July of that summer, 1979, but I was not a part of writing that opinion.

Q All right, in the involvement in the work you did for the Colorado judiciary, is that supposedly the basis of the conspiracy suit that Dr. Tyler

filed against you?

A That's correct. He was also suing in Colorado a number of physicians and hospitals as a conspiracy. Since then he joined the Court, the Judge, the Clerk, the Chief Clerk, myself as being part of that conspiracy.

MR. BLUNCK: I would ask that the witness be shown Trial Exhibit 5, Page 5 through -- (Clerk handing)

Q (By Mr. Blunck) Would you identify that document for us please.

A This is an opinion, an unpublished opinion that issued from the Court of Appeals when I left the court, it was issued June 4, so I had already left the Court and this is an opinion upon the case where we reconstructed the file in Tyler vs. Donald Alter.

Q And is this a courtesy copy of the opinion you received?

A That is correct.

Q And to the best of your knowledge is that a true and accurate copy of the opinion you received?

A That's correct.

MR. BURNHAM (sic): We would offer this Exhibit, pages 5 through 8.

THE COURT: That is one that I have received without objection, but I would receive it. (PLAINTIFFS' EXHIBIT 5, PAGES 5-8 RECEIVED.)

Q (By Mr. Blunck) All right. And there is mention of Edwin Ruland. Could you tell us who he is?

A Edwin Ruland was one of the judges on the Colorado Court of Appeals and was the particular Judge I was assigned to.

Q Did Judge Ruland end up being the subject of a lawsuit that Dr. Tyler, who was it then --

A Yes, several.

Q Who was Donald Smith?

A Donald Smith was the chief judge for

the Colorado Court of Appeals.

Q Did Mr. Smith end up in a federal lawsuit filed by Dr. Tyler?

A Yes.

MR. BLUNCK: I have no further questions, Your Honor.

THE COURT: All right you may step down, any further witnesses?

MR. BLUNCK: No, Your Honor, we have no other witnesses at this time.

THE COURT: I have reviewed the exhibits that are received without objection. I've reviewed the affidavits and trial briefs that were filed, and the record is uncontradicted, I have twice denied defendant's motions to dismiss this case for lack of personal and subject matter jurisdiction. Judge Marsh previously denied a motion to recuse me as the judge in this case. I denied defendant's motion to vacate the pretrial conference or trial date or to stay proceeding pending the

Oregon Supreme Court ruling on his petition for mandamus. It is my understanding the Oregon Supreme Court has since denied that petition. Am I correct about that?

MR. BLUNCK: Yes.

THE COURT: The Ninth Circuit for the third time has denied defendant's petition for writ of mandamus, admonishing the defendant that it may impose sanctions if further petitions are filed that are frivolous. The defendant didn't appear before the pretrial conference, even though I denied his motion for continuance. He didn't appear here for the trial, even though he was notified of the trial date.

The background of this case is that the defendant is a physician in Malheur County, Oregon. He was a lawyer licensed to practice in Colorado, and the exhibits demonstrate that he has filed

approximately ten previous actions in Colorado based upon hospital denial of his privileges. Most of those were unsuccessful, some were settled for nominal amounts. **(TYLER NOTE: THIS IS FALSE--NONE WERE SETTLED FOR NOMINAL AMOUNTS. ONE BEFORE JUDGE FINESILVER WAS SETTLED FOR $100,000 AGAINST THE ATTORNEY FOR BRIGHTON HOSPITAL. TWO SUITS WERE SETTLED TOGETHER AGAINST THE HOSPITAL AND THREE PHYSICIANS FOR $300,000. THOSE SETTLEMENTS RELEASED NO COCONSPIRATORS.)**

In June of 1986 he filed an action against a number of persons, including circuit and district judges, federal judges, alleging a conspiracy with business relations, outrageous conduct and violations of civil right statutes. On March the 7th, 1987 after that case was removed to this Court, Judge Redden dismissed the entire action on several grounds including judicial immunity, the

Statute of Limitations and the failure to state a claim. That was in Civil No. 86-854-RE. There was no appeal from that decision. Instead, on April 27, 1987 the defendant filed an action in Malheur County, Oregon Circuit Court, State Court, against the plaintiffs here and others and most of whom are attorneys who represented the defendants in Judge Redden's case. I don't recall that he named Judge Redden in that case also.

MR. BLUNCK: He didn't name him as a defendant, but he has referred to him as a co-conspirator.

THE COURT: All right. This action then that is being tried today was not filed to enjoin further litigation by the defendant against him. I'm aware of the anti-injunction act prohibiting the Federal Court from enjoining state court actions, except in certain limited circumstances. One of those, which of

course is an injunction that is necessary to aid the court's jurisdiction or to protect or effectuate the court's judgment. While these exceptions must be construed very narrowly, and should resolve all doubts about the propriety of injunction in favor of allowing the State Court action to proceed, the conduct of the defendant in the case, and in other cases that I've referred to, threatens to make a complete mockery of the judicial system. The defendant has added other defendants, and has slightly modified his claims from those that he made in the case Judge Redden dismissed when he filed the action in Malheur Circuit Court, and undoubtedly he can modify many more and start again, but the substance is precisely the same, and there is no serious question, but that he is attempting to relitigate over and over, the issues of conspiracy to deprive him of

his civil rights arising out of his original actions in Colorado by simply naming additional defendants and further conspiratorial charges.

A THE defendant can not escape the res judicata issue in this case. The Parson case cautions AGAINST injunctions under circumstances similar to this, however there is a difference in the case. In this case the plaintiffs moved in promptly in this Court to file this action, even before the State Court had returned its decision, which it no has, though disposition is not final. I am satisfied that Parson did not preclude the relief that the plaintiffs seek in the case. The defendant filed his State Court action in Malheur County April 29, 1987, and plaintiffs filed this action, June 8, 1987. The State Court dismissal came after this action was filed, and I'm satisfied that under the circumstances of

this case and the conduct that the defendant has engaged in, that the injunction in this case should issue. I'm not satisfied as to the extent of the injunction. It would seem that this should be a broad enough injunction to preclude the defendant from relitigating any of these issues that have previously been decided by this Court without appeal and by other courts without appeal. So I'm going to give the plaintiffs ten days to submit a proposed injunction and brief on the extent of that injunction, serve it on the defendant and I'll give the defendant ten days to respond, at which time I will decide the extent of the injunction. I'm also going to invite the plaintiffs to submit a motion for Rule 11 sanctions against the defendant and I'll give you ten days to do that with appropriate affidavits. I will give the defendant ten days to respond to that with

appropriate affidavits and if necessary i will hold a hearing on whether or not sanctions should be entered, and the extent of those sanctions. It strikes me that the only sanction that should be entered against the defendant are under Rule 11 are sanctions for actions that he has take in this Court, in this proceedings, that violate Rule 11. The defendant is not an ordinary pro se litigant. He is a lawyer admitted to the Bar, at least one time, in the State of Colorado as I understand it. It strikes me that many of the motions that he filed in this case, at least some of the motions that he filed are clearly improper in light of the rulings Judge Redden made and in light of the fact that he has not appealed from that judgment. It also strikes me that there may be some other bases for Rule 11 sanctions and I have considered, and I'm not prejudging those.

I will look at the defendant's briefs and affidavits and hear his testimony if he wants to give it. I do believe that under the circumstances of this case that no individual should be permitted to attempt to harass so many people for so little reason, and so in that regard, I ask you to propose an injunction as broad as we reasonably can under the law. I have no doubt, also, that shortly after this decision in this case is entered that I will also be the subject of another lawsuit and probably the subject of a motion to recuse which will be evaluated if and when it occurs, but, let me ask you this: Is the defendant still practicing medicine in the State of Oregon? **(TYLER NOTE--THIS IS OUTRAGEOUS, JUDGE PANNER KNEW OR SHOULD HAVE KNOWN THAT TYLER HAS NEVER PRACTICED IN OREGON SUBJECT OF THE SUIT FRAUDULENTLY DISMISSED BY JUDGE REDDEN.)**

MR. BLUNCK: I don't believe he is, at least it's hearsay, Your Honor, but I don't believe he is practicing medicine in Oregon. I might add that in the exhibits we submitted to the -- submitted AN EXHIBIT that he is admitted to practice law in the State of California. So he is a person who is familiar with the law and I think should be held to the standard of a lawyer.

THE COURT: All right. And you can -- is there anything else that needs to be taken care of today, Mr. Blunck?

MR. BLUNCK: No, I think we've covered it Your Honor.

THE COURT: All right. Well be in recess. (Recess)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON No. 87-601-PA ANTHONY YTURRI, et al., Plaintiffs, v. DONALD E. TYLER M.D., Defendant

NOTICE OF PERJURY BY PLAINTIFF CARL BURNHAM, JR. AND CONSPIRACY TO COMMIT PERJURY

COMES NOW the defendant who continues to claim that The Honorable Owen lacks jurisdiction of this case and that this court lacks subject matter jurisdiction.

Defendant hereby and herein notices the court of perjury by Carl Burnham, Jr., before this Court on April 11, 1988, and the inference that Carl Burnham, Jr., his counsel Lawrence Blunck, other members of the law firm of which Mr. Blunck is a member, and all of the plaintiffs committed conspiracy to commit perjury.

PERJURY NO. 1.

Defendant directs the attention of the Court to the reporter's transcript of the so-called, fraudulent "trial" held in Pendleton, Oregon, April 11, 1988. On Page 9, ll. 22-23, in reference to "the action before Judge Redden," Carl

Burnham, Jr., knowing it was false stated under oath, "We then filed motions to dismiss in the State Court on the grounds of collateral estoppel." That statement was directed to a material issue. The exhibits admitted and findings and holdings of this Court relate to lawsuits commenced by the defendant in Colorado. No issue was raised by Hartford or any other defendant either in the state court or in the federal court of possible applicability of the doctrines of collateral estoppel or res judicata in the case fraudulently before Judge Redden, # 86-854-RE, the lawsuit upon which this Court claims a basis for jurisdiction. The statement was made to provide this Court color or pretext for justification for an injunction fraudulently based wholly or in part upon lawsuits in Colorado prior to commencement of # 86-854-RE.

PERJURY NO. 2

Attention is directed to the "trial" transcript, p. 5, ll. 18-19. In answer to the status of the case proposed herein to be stopped by injunction, **Carl Burnham, Jr., knowing it was false, stated under oath, "Judge Jackson dismissed the complaint as being frivolous."** The case was dismissed under color of Rule 21, ORCP, by holding that the case had been previously litigated and was barred by res judicata. Carl Burnham's false testimony directed to **a material issue**. His false testimony was designed to conceal the fact from the record of this case, and provide "plausible deniability" for this Court, that the Oregon Court of Appeals is reviewing the issue of res judicata in the case to be stopped by the proposed injunction.

The following Oregon statute prohibits such activity. ORS 162.065 Perjury. (1) A

person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false. (2) Perjury is a Class C felony.

The inference is clear that Burnham and his counsel Lawrence P. Blunck, other lawyers in the firm of which Mr. Blunck is a member, and all of the plaintiffs in addition to Mr. Burnham conspired to commit each and both of the aforementioned perjuries. The coordination of all of the activities of the plaintiffs, all practicing lawyers, is well documented in attorney fees submitted in the case pending in the state court. In this instant case they are all represented by Mr. Blunck and his firm, and the inference is clear that all approved the perjury before it was committed. The lack of the complete record of the prior case, in disregard of all pertinent legal

precedence brought to the attention of the Court, and the lack of the record of the case subject of the proposed injunction se up those perjuries. This action reeks with collusion.

ORS 161.450 provides in pertinent part: "Conspiracy" described. (1) A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or more persons to engage in or cause the performance of such conduct. (2) Criminal conspiracy is a: *** (c) Class C felony if an object of the conspiracy is a Class C felony.

The "cleans (sic) hands doctrine" should apply. The following is pertinent:

"He who comes into equity must come with clean hands. The well-established principle expressed in this maxim is one

of ancient origin and broad application. It is a cardinal maxim and the expression of the elementary and fundamental conception of equity jurisprudence. Although not the source of any distinctive doctrine, it furnishes a most important and universal rule affecting the entire administration of equity jurisprudence as a system of remedies and remedial rights. *** It means that equity refuses to lend its aid in any manner to one seeking its active interposition who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief. *** has nothing to do with the rights or liabilities of the parties, but is invoked in the interest of the public on grounds of public policy and for the protection of the integrity of the court." (emphasis added) 30 CJS Equity s.93, pp. 1006-1012.

By not dismissing this action before,

this Court has condoned, approved, and ratified the unlawful and criminal acts of the plaintiffs that were committed before other judges. The aforementioned felonious acts were committed by the plaintiffs in this case before this Court. If this Court issues the proposed judgment and injunction, it clearly condones, approves, and ratifies felonies. This Court should dismiss this action and discontinue aiding the unlawful avoidance of payment of damages.

DATED: May 23, 1988 Submitted by:

(signed) Donald E. Tyler, M.D.

AFFIDAVIT

The foregoing statements are true to my knowledge and belief and made and submitted by me in good faith and not for purposes of harassment or unnecessary delay. (signed) Donald E. Tyler, M.D. AFFIANT.

STATE OF OREGON

County of Malheur ss.

The foregoing was sworn to and subscribed to before me by Donald E. Tyler, M.D., in Ontario, Malheur County, Oregon, on May 23, 1988 (signed) NOTARY PUBLIC My commission expires: (copy illegible) Submitted by (signed) Donald E. Tyler, M.D. DEFENDANT, pro se

(ADDED NOTE -- PERJURY AND CONSPIRACY TO COMMIT PERJURY HAVE NOT BEEN REFUTED AND DOCUMENTS PROVING PERJURY ARE APPENDED TO DEFENDANT'S MOTION TO STAY PENDING APPEAL submitted August 22, 1988 and Appendix p. A- .)**

COMPLAINT of case subject of injunction

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR

DONALD E. TYLER, M.D., Plaintiff v. HARTFORD INSURANCE GROUP, YTURRI, ROSE, BURNHAM, EBERT & BENTZ, ANTHONY YTURRI, CARL BURNHAM, JR., CLIFF S. BENTZ, TERESA

J. HUTCHENS, DEBBIE FREEPONS CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, THOMAS L. ROBERTS, EDWIN G. RULAND, DONALD P. SMITH, JR., HOLMES, DeFRANCQ & SCHULTE, P.C., KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, X INSURANCE COMPANY, a fictitious name, XX INSURANCE COMPANY, a fictitious name, Y INSURANCE COMPANY, a fictitious name, YY INSURANCE COMPANY, a fictitious name, Z INSURANCE COMPANY, a fictitious name, and ZZ INSURANCE COMPANY, a fictitious name, Defendants.

COMPLAINT

Obstruction of Justice , Fraudulent use of legal proceedings, Racketeering, Personal injury. No. 87-04-21572-L Filed April 29, 1987 **CLAIM FOR RELIEF: UNLAWFUL INTERFERENCE WITH AND OBSTRUCTION OF JUSTICE AND BY FRAUDULENT USE OF LEGAL PROCEEDINGS PURSUANT TO CONSPIRACY**

1.

The PLAINTIFF complains of defendants jointly and severally and for cause of action alleges the following.

2.

Acts subject of this complaint occurred in the County of Malheur of the State of Oregon.

3.

Defendants herein and each of them conspired with each other and with others to unlawfully intentionally obstruct, impair, and hinder the administration of law and judicial function in lawsuits in which the plaintiff had and has an interest and to fraudulently use legal proceedings to damage and injure the plaintiff. Pursuant to that conspiracy the defendants herein and each of them and by acts of their coconspirators committed unlawful and criminal acts alleged herein.

Pursuant to conspiracy the defendants and each of them acted falsely and fraudulently to intentionally intimidate and cause the plaintiff injury by insulting, humiliating, and disparaging him in his professional qualifications. At all times pertinent herein defendants and their coconspirators knew that the plaintiff was and is qualified to practice medicine and surgery. In truth, after completing required premedical education at U.C.L.A., he graduated from and received the degree of Doctor of Medicine from the University of Oregon Medical School in 1950, and was one of three in his class elected in his junior year to the Alpha Omega Alpha Honor Society. He served as a medical officer in the Navy during the Korean War. His postgraduate training included a rotating internship and residency in pathology at the

University of Utah and a four year fellowship at the Mayo Clinic in general surgery and urology. He was an instructor in urology at the University of Utah Medical School from 1959 to the fall of 1964. In February, 1964, he was certified by the American Board of Urology. He was licensed to practice medicine by examination in the State of Oregon in 1951. He has authored articles based upon his original research in eight major medical journals and has authored three scientific books.

5.

The defendants and each of them knowingly and intentionally joined and acted pursuant to an ongoing, continuing conspiracy to unlawfully and illegally interfere with and obstruct justice in lawsuits in which the plaintiff had and has an interest and which included extremely outrageous conduct committed

pursuant to conspiracy to cause the plaintiff severe emotional distress. They had knowledge of acts committed pursuant to that conspiracy prior to their joining the conspiracy, and they acted pursuant to that conspiracy to cause the plaintiff injury and damage as herein alleged. Defendants include insurance companies who employed named individual and law firm defendants to commit the wrongful, unlawful, and criminal acts subject of this complaint, and who directed, approved, and ratified those acts which were done for their benefit. The names of those insurance companies are unknown and they are designated by fictitious names in accord with Rule 20.H., O.R.C.P., and plaintiff requests their true names be added as defendants by amendment when known.

The defendants and each of them are **liable for all damages proximately resulting from all acts committed pursuant to that total overall conspiracy** which they joined and in which they participated regardless of who committed them or where or when they were committed. Furthermore, and in addition, the defendants are liable for all injuries and damages to the plaintiff alleged herein from all acts alleged herein because of their having been proximately caused by **intentional acts of defendants and others which have combined to produce an indivisible, unapportionable injury**. Acts committed intentionally to damage the plaintiff pursuant to the conspiracy subject of this complaint and damages which have been the proximate result thereof follow.

7.

The reason or motive of the defendants herein for their acts is that there was and is no legitimate defense for the lawsuits illegally obstructed subject of this complaint, and the acts of the defendants are admissions of that.

8.

Defendants herein are jointly and severally responsible for and liable for damages proximately caused by all acts committed pursuant to aforementioned continuing conspiracy including but not limited to damages alleged in **EXHIBIT A** , appended hereto and incorporated herein by this reference, and they are jointly and severally responsible for and liable for damages for all other acts alleged herein. **Acts committed pursuant to the conspiracy** which proximately caused the plaintiff damages **for which defendants herein are liable** (paragraphs where details are found

in EXHIBIT A are noted in parentheses below) include but are not limited to:

(1) acts which illegally deprived the plaintiff the benefit of a jury verdict in his favor in the amount of $730,000.00 plus interest, (detailed in paragraphs 25-31 of EXHIBIT A, appended hereto and incorporated herein by this and other references),

(2) theft and illegal destruction of 50 depositions consisting of over 3000 pages prior to trial which were the property of the plaintiff, evidence prior to trial, and evidence after trial before appeal, by judges of the Colorado Court of Appeals and its clerk, and their illegal, outrageous, fraudulent acts to replace them with copies that would be legally useless in pending trials, for the purpose of illegally denying plaintiff his right of trial and to obstruct justice. Such fraudulent copying under guise of

"reconstruction" included acts by their agent Debbie Freepons Craig acting in Ontario, Oregon, where those Colorado judges including defendants herein Smith and Ruland had a complete lack of jurisdiction, and where they were not acting in any judicial capacity, and she acted pursuant to instructions by aforementioned judges, (paragraphs 15, 18-22, EXHIBIT A),

(3) theft of depositions, property of the plaintiff, (paragraph 18),

(4) extortion of the plaintiff by judges of the Colorado Court of Appeals, (paragraph 20),

(5) concealment and destruction of trial transcripts, (paragraph 27, EXHIBIT A),

(6) fraudulent fabrication of facts and fraudulent opinions by members of the Colorado Court of Appeals and by members of the U.S. Court of Appeals for the Tenth Circuit, (paragraphs 23, 46, 51),

(7) illegal, unlawful order by Federal Judge Sherman Finesilver requiring plaintiff to post a bond in the outrageous amount of $48,000.00 fraudulently called a "cost bond" in the U.S. District Court for the District of Colorado under color and pretext of Colorado State statutes allowing order of cost bond for non-residents to use Colorado state courts, coupled with the illegal threat that he would illegally in his unrestricted power order payment of attorney fees of defendants from that bond. Because plaintiff refused to post such bond as a condition to sue in the United States District Court and in an antitrust action not allowing defendants attorney fees in any instance, Finesilver, pursuant to conspiracy subject of this complaint, unlawfully dismissed the involved lawsuit, illegally depriving the plaintiff right to trial, (paragraphs 46-52, EXHIBIT A),

(8) illegal denial of plaintiff's right to trials in state and federal courts of the state of Colorado, and in effect illegally closing the courts in Colorado for his use as a plaintiff,

(9) unlawful changes in transcripts of trial proceedings to fraudulently falsify them, (paragraph 27, EXHIBIT A),

(10) perjury and subornation of perjury by lawyers, (paragraph 24, EXHIBIT A),

(11) jury tampering, (paragraph 26, EXHIBIT A),

(12) fraud by lawyers, (41, 46)

(13) initiation of a fraudulent lawsuit against the plaintiff through fraud and collusion by Hartford Insurance Co., (paragraphs 41-43, EXHIBIT A),

(14) **breach of plaintiff's professional liability insurance** by a member of Hartford Insurance Group, to intimidate plaintiff to illegally prevent his rightful use of courts and to prevent his

rightfully continuing to prosecute lawsuits in progress, **while the plaintiff was residing in Ontario, Oregon,** in addition to when he was residing in Colorado. (paragraphs 41-45, EXHIBIT A).

(15) abuse of use of a committee of the Colorado Medical Society, the Colorado Board of Medical Examiners, and the Grievance Committee of the Colorado Supreme Court by Hartford and coconspirators including St. Paul Insurance to threaten and abuse the plaintiff to prevent and interfere with the plaintiff's rightful use of courts involving lawsuits then in progress and to prevent plaintiff from rightfully seeking remedy by future lawsuits, (paragraphs 44-45, 39-40, 38)

(16) unlawful, unethical, immoral requirement of plaintiff to give his **permission to Hartford Insurance to examine private,** personal, medical records

of all patients cared for by plaintiff in hospitals as a precondition to renew his professional liability insurance to intimidate and punish the plaintiff to prevent his continuing to prosecute lawsuits then in progress against physician conspirators who were insured by Hartford and to prevent his initiating other lawsuits for damages due to acts committed pursuant to aforementioned conspiracy. (paragraphs 44-45, EXHIBIT A).

9.

On June 3, 1986, the plaintiff properly commenced Civil action No. 86-06-20969-L by filing a complaint in the Circuit Court of the State of Oregon for the County of Malheur in Vale, Oregon. At **8:33 A.M., Monday, July 7, 1986**, prior to any responses from defendants, in accord with Rule 23, Oregon Rules of Civil Procedure, the plaintiff rightfully filed in the

aforementioned state court an **AMENDED COMPLAINT**, copy of which is appended hereto as **EXHIBIT A**, with its exhibits A through I. At all times pertinent herein all defendants and coconspirators named herein knew that **at that instant the "complaint" was no longer a pleading** or a part of the record as enunciated by the Oregon Supreme Court in Wells v. Applegate, 12 Or 208, 6 P 770 (1885) and in Noonan v. City of Portland, 161 Or 213, 88 P.2d 808 (1938), and by the U.S. Supreme Court in Young v. Martin, 8 Wall 354, 19 L.Ed. 418 (1869). A copy of that **amended complaint, with filing time and date stamped as in EXHIBIT A**, and certified by the plaintiff on an attached page that it was filed in the state court July 7, 1986, **was mailed on July 7, 1986**, by certified mail with acknowledgment of receipts to defendants Hartford, (represented by Yturri, et al.), Judges

Smith, Ruland, Foote, Vollack, Roan, Bockman, (represented by Carter), attorney Craig (represented by Carter and Roehr), Roberts (represented by K. Roberts), Bobbitt, Reid, Ferrin, (represented by Dave Frohnmayer, Attorney General of the State of Oregon, and Thomas K. Elden, Assistant Attorney General of the State of Oregon), and Judge Finesilver (Turner and Kobbervig). Kostol (represented by Frohnmayer and Elden) refused to accept delivery of the certified mail. Service of summonses and complaints upon the remainder of the defendants was illegally interrupted by acts subject of this complaint.

10.

On or about July 3, 1986, and at other times since, Charles H. Turner and Judith Kobbervig, acting in conflict with their primary duty as United States Attorneys to prosecute for offenses against the United

States, conspired with defendants herein and they and all defendants herein joined and acted pursuant to an ongoing conspiracy to unlawfully interfere with and obstruct the plaintiff's prosecution of the case of which **EXHIBIT A** is the AMENDED COMPLAINT including acts designed to deprive the plaintiff of his right to trial of that case in a court of the State of Oregon having legal jurisdiction. Knowingly joining the total conspiracy subject of this complaint Turner and Kobbervig acted pursuant to the total conspiracy as follows:

(a) On July 3, 1986, knowing their misrepresentations were false and with the intent to enable themselves, defendants, and named coconspirators to fraudulently use legal proceedings and to thereby obstruct justice and injure and damage the plaintiff, they illegally filed in the U.S. District Court for the District of

Oregon in Portland, Oregon, a false and fraudulent document labeled as a "petition for removal" of the lawsuit of **EXHIBIT A** to that court, copy appended hereto as **EXHIBIT B** (without the 24 page accompanying document presented as the "complaint"). Without claiming to represent any defendant in that case, and without prior court order authorizing them to act, they were strangers to the case, illegal meddlers, and **not acting within the duties of their offices.** All defendants herein and their named coconspirators including Turner, Kobbervig, Thomas K. Elden, Dave Frohnmayer, Judge Redden, and Judge Yraguen at all times pertinent knew that a non-party could not remove a case from state to federal court as decided long ago in First Nat. Bank v. Pancake, 172 NC 513, 90 S.E. 515 (1916), in State v. Barnes, 5 ND 350, 65 N.W. 688 (1895), and

in Nelson v. Peter Kiewit Sons' Co., 130 F.Supp. 59, (1955, NJ). Turner and Kobbervig by their aforementioned acts committed pursuant to conspiracy intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of economic interference and obstacle in violation of ORS 162.235 (Obstructing judicial administration) and by such unlawful and criminal acts committed pursuant to conspiracy subject of this complaint they intentionally proximately caused the plaintiff injury and damage as herein alleged.

(b) Pursuant to the conspiracy subject of this complaint, at 10:26 A.M., July 9, 1986, coconspirators Turner and Kobbervig illegally fraudulently filed a copy of the aforementioned bogus petition and a false fraudulent "Notice of filing of petition for removal" in the Circuit Court of

Oregon for Malheur County, in Vale, Oregon, copy of notice and cover letter appended hereto as **EXHIBIT C**. With the intent pursuant to conspiracy to provide pretext for all defendants herein and their coconspirators to unlawfully act in the federal court to damage the plaintiff, **they falsely and fraudulently stated and claimed in writing** that "Defendant, United States of America filed ...a Petition for Removal ... ." Coconspirators Turner and Kobbervig at all times pertinent knew that the foregoing statement was false and that the truth was that the United States of America was not a defendant, and that the United States of America did not file a petition for removal. At all times pertinent herein the **defendants and all their coconspirators named herein knew that a suit against an officer of the United States is not a suit against the United States** and that many courts have

held that including the U.S. Supreme court in Philadelphia Company v. Stimson, 223 U.S. 605 (1911). The truth is, Turner and Kobbervig themselves, not claiming to represent any defendant, unlawfully filed the bogus fraudulent petition for removal which is clear on the face of the so-called "petition." Turner and Kobbervig knowingly made the foregoing false statements in writing to Judge Yraguen, a public servant, in connection with an application for a benefit in **violation of ORS 162.085, (Unsworn falsification)** and as a proximate result of that criminal act committed pursuant to conspiracy subject of this complaint the plaintiff was injured and damaged as herein alleged. Turner and Kobbervig by their aforementioned acts committed pursuant to conspiracy intentionally obstructed, impaired, and hindered the administration of law and judicial

function by means of economic interference and obstacle in violation of ORS 162.235 (Obstructing governmental or judicial administration) and as a proximate result of those criminal acts committed pursuant to conspiracy subject of this complaint, the plaintiff was proximately damaged as herein alleged.

11.

The aforementioned illegal and fraudulent acts of Turner and Kobbervig committed as coconspirators of defendants pursuant to the conspiracy subject of this complaint and which all defendants herein ratified and for which they are liable were false representations of matters of fact which were intended to provide coconspirator Judge F.J. Yraguen pretext for not legally acting in the lawsuit of EXHIBIT A. At all times pertinent coconspirator Yraguen was Judge of the Circuit Court of the State of Oregon for the County of Malheur

and who at all times pertinent herein had legal jurisdiction of the lawsuit of which EXHIBIT A is the Amended Complaint. Pursuant to conspiracy, at all times after July 9, 1986, and on November 18, 1986, coconspirator Judge Yraguen refused and continued to refuse to decide pending motions before him or to proceed in any other legal way with the lawsuit of which EXHIBIT A is the Amended Complaint.

12.

Pursuant to conspiracy, letters were written on or about November 19, 1986, by **Defendant Kenneth E. Roberts** and on or about November 24, 1986, by coconspirator Thomas K. Elden to the Hon. Frank J. Yraguen and received by him in Vale, Malheur County, Oregon, each falsely and fraudulently stating that the case of EXHIBIT A had been removed to the federal court. Defendant Kenneth E. Roberts and coconspirator Elden knew their statements

were false when they wrote them and they wrote them pursuant to conspiracy with the intent to provide pretext for Judge Yraguen to not legally act according to his legal duty in the lawsuit of EXHIBIT A, and with the intent to thereby obstruct justice and injure and damage the plaintiff. As a proximate result Judge Yraguen refused to decide pending motions before him or to proceed in any other legal way with the lawsuit of which EXHIBIT A is the Amended Complaint. Defendant Kenneth E. Roberts and coconspirator Elden by their aforementioned acts committed pursuant to conspiracy intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of economic interference and obstacle in violation of ORS 162.235, and as a proximate result of those criminal acts committed pursuant to conspiracy subject

of this complaint, the plaintiff was proximately injured and damaged as herein alleged.

13.

Pursuant to conspiracy subject of this complaint, the aforementioned **bogus petition and filing of it** in the federal court and copy of it in the state court **by Turner and Kobbervig did not even provide color of conforming to mandatory requirements of 28 USC s.1446**, copy appended hereto as **EXHIBIT D**. At all times herein all defendants and each of them and coconspirators Turner, Kobbervig, Elden, Yraguen, and Redden knew that the requirements of the removal statutes are jurisdictional; and they knew that the removal statute must be strictly construed in favor of state court jurisdiction. At all times herein defendants and each of them and coconspirators Turner, Kobbervig, Elden, Yraguen, and Redden knew that 28

U.S.C. s.1446 states "Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States ... a verified petition ...statement of facts entitling ...to removal together with a copy of all process, pleadings and orders served upon him ...

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond ... defendants will pay all costs ... not removable or was improperly removed.

(e) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State

court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded." (emphasis added)

None of those mandatory, jurisdictional requirements were complied with and none were waived by the plaintiff who insisted upon their compliance by motion to remand to the state court. Pursuant to conspiracy:

(a) the bogus so-called petition was not filed by a defendant, which all defendants herein and named coconspirators knew was a jurisdictional requirement and pronounced to be so by the U.S. Supreme Court in Ayers v. Watson, 113 U.S. 594, 5 S.Ct. 641, 28 L.Ed. 1093 (1885) and is established law cited in 76 C.J.S. p. 1056; and defendants herein and named coconspirators at all times pertinent knew that a non-party could not remove ;

(b) it was not verified by a defendant (sworn to by an affidavit);

(c) it did not contain required contents; (Defendants and named coconspirators knew at all times pertinent that a federal officer must set forth all the circumstances and positively explain his relation to the matter and showing that it was confined to his acts as an officer as decided by the U.S. Supreme Court in Maryland v. Soper (No.1), 270 U.S. 9 (1926);

(d) it was not accompanied by a bond; (Defendants and named coconspirators knew at all times pertinent that the requirement was **mandatory** even if the petition was filed by the U.S. Attorney as pronounced in Nelson v. Peter Kiewit Sons' Co., 130 F.Supp 59, 1955, DC NJ.); and

(e) the copy of the petition for removal was not filed with the clerk of the state court by a defendant to effect a removal.

Pursuant to conspiracy, defendants and named coconspirators extremely outrageously flaunted their total, unlimited, arbitrary power to totally disregard the mandatory requirements of the removal statutes to intimidate and injure the plaintiff including causing him to suffer severe emotional distress. **On the face of the record, the lawsuit of EXHIBIT A was not removed to the federal court and the federal court at all times pertinent herein did not have jurisdiction** and at all times pertinent herein each and all of the defendants and coconspirators named herein knew that.

14.

On July 15, 1986, the Plaintiff rightfully and properly submitted by certified mail to the United States District Court for the District of Oregon a motion to remand the case to the state court. Pursuant to conspiracy, all defendants herein and

named coconspirators acted deceitfully and illegally as if jurisdiction of the lawsuit of EXHIBIT A was in the federal court which they knew was false.

15.

Pursuant to the total conspiracy subject of this complaint, coconspirator **Hon. James A. Redden**, judge of the U.S. District Court for the District of Oregon, who knew at all times pertinent herein that he lacked jurisdiction, on July 16, 1986, and at all times thereafter pertinent herein, knowingly unlawfully refused and continued to refuse to remand the case of EXHIBIT A to the state court. Pursuant to conspiracy, on September 2, 1986, he unlawfully denied the plaintiff's motion to remand and then retracted it the same day. Pursuant to conspiracy, on October 16, 1986, after three months' delay, he again **knowingly unlawfully denied plaintiff's motion to remand,**

fraudulently holding that Judge Finesilver properly removed the case to the federal court which was false and at all times pertinent herein Judge Redden knew that it was false. On the face of the petition, Finesilver did not remove the case himself or by anyone claiming to represent him, the petition was not verified by Finesilver, no bond accompanied the petition, and Finesilver did not file a copy of the petition with the clerk of the state court which was necessary to effect the removal. Pursuant to conspiracy, by the aforementioned acts Judge Redden intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of economic interference and obstacle in **violation of ORS 162.235** (Obstructing governmental or judicial administration), and as a proximate result of his unlawful and criminal acts committed pursuant to

conspiracy subject of this complaint the plaintiff was injured and damaged as herein alleged.

16.

Pursuant to conspiracy subject of this complaint, no defendant herein or named coconspirator at any time took any appropriate action or made any motions to move either the complaint or the amended complaint of the case of EXHIBIT A from the state court to the federal court in accord with **28 USC ss. 1447 and 1449**, copies appended hereto as **EXHIBIT E**. Even if the case had been properly removed, which it was not, without the original or rertified copy of the AMENDED COMPLAINT, Redden had no color of jurisdiction **for that reason as well as for the reason that the claimed removal was false and fraudulent when he fraudulently unlawfully denied the plaintiff's motion to remand on September 2, 1986, and on October 16,**

1986. Redden was notified that the bogus petition was filed on July 9, 1986, in the state court by mail to him on July 11, 1986, August 4, 1986, and August 7, 1986. He was notified that the amended complaint was filed July 7, 1986, in the state court by mail to him on July 11, 1986, August 4, 1986, and on August 13, 1986, when, by way of notice and continuing to contest jurisdiction of the federal court, the plaintiff mailed to Redden copies of the amended complaint seeking relief in the state court with the date it was filed and other documents filed in the state court including Hartford's motion to dismiss. At no time died the plaintiff submit a motion to amend the complaint in the federal court pursuant to Rule 15, F.R.C.P. At all times pertinent all defendants and coconspirators named herein named knew that without original or certified copies of pleadings, a court has

no jurisdiction to decide the issues of the pleadings, a complete lack of subject matter jurisdiction. (71 C.J.S. p.17). Pursuant to conspiracy, the origin of the "complaint" that was filed with the bogus non-verified petition for removal was not revealed and was not even claimed to be a photocopy of the original complaint or even of a copy served upon a defendant. At all times pertinent herein, all defendants and coconspirators Turner, Kobbervig, Elden, Yraguen and Redden knew that the "complaint" filed by Turner and Kobbervig in the federal court was not even verified by affidavit to be a copy of the original filed with the clerk of the state court or even a copy of a copy served upon a defendant. Pursuant to conspiracy that dubious document having no legal significance is the so-called "complaint," to which motions by defendants were fraudulently directed in

the federal court and upon which Judge Redden pursuant to conspiracy fraudulently based his illegal fraudulent decisions, opinions, dismissal of the lawsuit subject of EXHIBIT A, and his outrageous illegal order to the plaintiff to pay Hartford's attorney fees and costs.

17.

Acting pursuant to the conspiracy subject of this complaint, on or about August 4, 1986, **Defendant Craig**, a lawyer practicing in Oregon, in fraud knowing the court lacked jurisdiction, submitted to the U.S. District Court for the District of Oregon, in Portland, Oregon, in the lawsuit of **EXHIBIT A** a false, fraudulent affidavit claiming that her employment by the Colorado Court of Appeals ended prior to June, 1978. After the plaintiff submitted documents that proved that to be false, Craig submitted another affidavit to the same court on or about August 21, 1986,

signed August 19, 1986, affirming that she was employed by the court in May, 1979. In that affidavit, dated August 19, 1986, pursuant to the total conspiracy subject of this complaint, Craig with the intent to provide coconspirator Redden color of a pretext to dismiss the lawsuit of EXHIBIT A declared under oath, "I have not had any contact with plaintiff Donald E. Tyler or **his legal affairs** at anytime since that date." (emphasis added). That declaration was false and fraudulent and Craig knew it was false when she swore to it and when she submitted it to the court. She wrote a letter from Oregon dated Nov. 29, 1982, addressed to the clerk of the Colorado Court of Appeals concerning the destruction of depositions and trial exhibits subject of EXHIBIT A, copy of which letter was sent contemporaneously to the plaintiff by the clerk. That letter most certainly constituted "contact with

legal affairs of Donald E. Tyler," plaintiff herein. The letter was connected to obstruction of justice by cover-up of the deliberate illegal theft and destruction of those depositions and exhibits. Craig's false affidavit was submitted to support false fraudulent claims that the lawsuit of EXHIBIT A was barred by statutes of limitation. Craig's affidavit, a sworn statement in regard to a material issue, was made by Craig knowing it to be false, clearly **a violation of ORS 162.065 (Perjury, a Class C felony).** Pursuant to conspiracy subject of this complaint by the afcrementioned acts Craig intentionally obstructed, impaired, and hindered the administration of law and judicial function by economic interference and obstacle in **violation of ORS 162.235** (Obstructing governmental or judicial administration), and as a proximate result of the foregoing unlawful

and criminal act committed pursuant to conspiracy subject of this complaint Craig injured and damaged the plaintiff as herein alleged.

18.

At all times and places pertinent herein **Defendant Frederic P. Roehr was acting as an agent of Defendant Vergeer, Roehr & Sweek** which is responsible and liable for his acts alleged herein and subject of this complaint.

19.

Pursuant to the conspiracy subject of this complaint, the aforementioned false fraudulent affidavit by Craig signed August 19, 1986, was submitted to the U.S. District Court for the District of Oregon on or about August 21, 1986, by Craig and by **Defendant Frederic P. Roehr** who both knew that it was false and fraudulent and both of them knew at all times pertinent herein that the aforementioned federal

court lacked jurisdiction of the case of EXHIBIT A. With the intent that conduct constituting a crime punishable as a felony be performed, **Roehr agreed with Craig** to engage in or cause the performance of such conduct in **violation of ORS 161.450, (Conspiracy).** Their acts committed pursuant to conspiracy including the total conspiracy subject of this complaint proximately damaged the plaintiff as herein alleged. Roehr and Craig pursuant to conspiracy intentionally obstructed, impaired, and hindered administration of law and judicial function by means of economic interference and obstacle in **violation of ORS 162.235**, which proximately caused injury and damage to the plaintiff as herein alleged.

20.

On or about July 24, 1986, **Defendant Kenneth E. Roberts** pursuant to conspiracy with **Defendant Thomas L. Roberts** and

pursuant to the total conspiracy subject of this complaint submitted to the U.S. District Court for the District of Oregon in Portland, Oregon, in the case subject of EXHIBIT A, in fraud knowing that the court lacked subject matter jurisdiction, a "Memorandum of law in support of Motion of Thomas L. Roberts to dismiss." With the intent to provide coconspirator Judge Redden color of pretext to fraudulently dismiss the lawsuit of EXHIBIT A, in that memorandum they falsely misrepresented and misquoted a case, knowing that their quotation was falsified, to provide some color to a claim opposite established legal precedence on a material issue. At all times pertinent herein, all defendants and named coconspirators herein knew that the law is well established by legal precedence that a conspirator acts as an agent of all coconspirators, and that the act of a conspirator in a state provided

basis for personal jurisdiction of courts in that state of all coconspirators whether or not they personally have been in the state. Pursuant to conspiracy, in the lawsuit of which EXHIBIT A is the amended complaint, Craig and other coconspirators acted in Oregon, and coconspirators including defendant Thomas L. Roberts acting in Colorado fraudulently claimed lack of personal jurisdiction in Oregon courts based upon their not actually being in Oregon. Pursuant to conspiracy, Defendants Thomas L. Roberts and Kenneth E. Roberts, both lawyers, falsely and fraudulently misrepresented and misquoted First Interstate Bank v. Tex-Ark Farms, 71 Or App 427, 692 P.2d 678 (1984) as holding:

"Jurisdiction of the partnerships is not based on their agent's acts in Oregon. ..." (emphasis added)

Pursuant to conspiracy, defendants Kenneth Roberts and Thomas Roberts fraudulently added the word "not" to the quotation of the opinion to falsely represent the holding of the case as having the exact opposite meaning of the true holding. (at 692 P.2d 686). Defendants Kenneth E. Roberts and Thomas L. Roberts knowingly made the aforementioned false written statement to a public servant, Judge Redden, in connection with an application for a benefit in violation of ORS 162.085 (Unsworn falsification), and as a proximate result of that unlawful and criminal act the plaintiff was intentionally injured and damaged as herein alleged. By their aforementioned act committed pursuant to conspiracy subject of this complaint Defendants Kenneth E. Roberts and Thomas L. Roberts intentionally obstructed, impaired, and

hindered the administ ion of law and judicial function by means of economic interference or obstacle in violation of ORS 162.235 (Obstructing governmental or judicial administration, a Class A misdemeanor), and as a proximate result of that unlawful and criminal act the plaintiff was damaged herein as alleged. With the intent that conduct constituting a crime punishable as a Class A misdemeanor, ORS 162.235, be performed, Defendants Kenneth E. Roberts and Thomas L. Roberts agreed with each other to engage in or cause the performance of such conduct in violation of ORS 161.450 (Conspiracy).

22.

At all times and places herein Defendant James C. Carter was acting as an agent of Defendant Holmes, DeFrancq & Schulte, P.C. which is responsible and liable for his acts alleged herein and subject of this

complaint.

23.

Pursuant to the conspiracy subject of this complaint, on or about August 4, 1986, **Defendants Donald P. Smith, Jr.**, an attorney and judge of the Colorado Court of Appeals but not acting in that capacity, and **Edwin G. Ruland**, an attorney and former judge of the Colorado Court of Appeals not acting in that capacity, pursuant to conspiracy and acting through their attorney submitted in the case of EXHIBIT A to the U.S. District Court of the District of Oregon, in Portland, Oregon, in fraud knowing that the court lacked subject matter jurisdiction, in the case of EXHIBIT A affidavits **each deceitfully declaring** under oath, "At no time during the relevant periods alleged in the complaint did I travel to the state of Oregon **or engage in activities in the state of Oregon which in any way related**

to plaintiff or the acts alleged in the complaint." (emphasis added to fraudulent part) The aforementioned fraudulent statement was made by each of defendants Smith and Ruland pursuant to the conspiracy subject of this complaint to provide coconspirator Defendant Redden pretext to fraudulently dismiss the lawsuit of EXHIBIT A. Pursuant to conspiracy, coconspirator Judge Redden used those fraudulent statements as pretext to dismiss the case. The statements of Defendants Smith and Ruland were false implication and deceit in that defendant Debbie Freepons Craig acted as their agent in Oregon, and they are clearly responsible for and liable for her acts committed in Oregon. They planned and directed Craig's activities in Oregon, subject of the amended complaint of EXHIBIT A, and they were mailed by certified mail received by them on May 3,

and May 2, 1979, respectively, copy of the arrangements by the Colorado Court of Appeals for her trip to Ontario, Oregon, April 9, 1979, to copy depositions and other details. After receiving that notice by certified mail, they fraudulently and illegally accepted as part of the record on appeal the legally useless copies of depositions made by Craig on that trip to Oregon, knowing they would be legally useless to the plaintiff at trial, to obstruct justice subject of the total conspiracy, **ratifying her acts as their own.** Pursuant to the conspiracy subject of this complaint **Defendant James C. Carter** as agent for Smith and Ruland,and representing them as their attorney, submitted the foregoing deceitful affidavits of Smith and Ruland on or about August 4, 1986, to the U.S. District Court in the case of EXHIBIT A knowing that they were deceitful and

knowing that the court lacked jurisdiction of the subject matter of the lawsuit of EXHIBIT A. Pursuant to conspiracy, the aforementioned deceitful affidavits were submitted to obtain benefit from coconspirator Judge Redden of dismissal of the lawsuit of EXHIBIT A and specifically related to the fraudulent claims of judicial immunity when defendants Smith, Ruland, and Carter knew that **Smith and Ruland had no immunity for acts committed in the State of Oregon by their agent and where as judges they had no jurisdiction whatsoever.** At all times pertinent defendants Smith, Ruland, and Carter knew that the Colorado Court of Appeals held that immunity for acts by state government employees stopped at the Colorado border as held by the Colorado court in Peterson v. State of Texas, __Colo.App._, 635 P2d 241 (1981) and by the U.S. Supreme Court in Nevada v. Hall, 440 U.S. 410, 99 S.Ct.

1182 (1979). Smith, Ruland, and Carter intentionally obstructed, impaired, and hindered the administration of law and judicial function in violation of ORS 162.235, and as a proximate result of their unlawful and criminal acts committed pursuant to conspiracy the plaintiff has been injured and damaged as herein alleged. Pursuant to conspiracy the affidavits were insufficient to address the issue of the judges joining a conspiracy, an allegation that must be accepted as true. All of the defendants and coconspirator Redden knew at all times pertinent that the joining and participating in a conspiracy is not a judicial act and immunity does not apply as held in the Ninth Circuit Court of Appeals, supervisor of the U.S. District Court for the District of Oregon, in Rankin v. Howard, 633 F.2d. 844 (9th Cir, 1980).

24.

At all times pertinent herein defendants Anthony Yturri, Carl Burnham, Jr., Cliff S. Bentz, and Teresa J. Hutchens were acting as agents of Yturri, Rose, Burnham, Ebert & Bentz and as agents for Hartford Insurance Group which are responsible and liable for their acts and each of them. Supervising employees of Hartford joined and acted pursuant to conspiracy in Hartford's behalf and for Hartford's benefit and those acts were ratified by Hartford who is responsible and liable for all acts committed pursuant to the conspiracy.

25.

On July 9, 1986, pursuant to conspiracy between defendants Hartford Insurance Group, Hutchens, and Burnham, and pursuant to the total conspiracy subject of this complaint, **defendants Hutchens, Burnham, and Hartford** submitted to the Circuit

Court for the State of Oregon for the County of Malheur in the case of EXHIBIT A false and fraudulent statements in Hartford's "Motion to quash service and dismiss plaintiff's amended complaint," knowing they were false and fraudulent. False and fraudulent statements knowingly submitted included the statement that "Plaintiff's professional conduct as a physician was questioned and reviewed by a hospital review committee at Brighton Community Hospital in Brighton, Colorado, the Colorado Medical Society and Plaintiff's malpractice insurance carrier in Colorado, HARTFORD INSURANCE." Continuing in the same document, they falsely and fraudulently stated, "Plaintiff's refusal to cooperate with these reviews resulted in the cancellation of his liability insurance." Those statements, material to issues subject of the lawsuit of EXHIBIT A, were and are

totally false, and aforementioned defendants knew they were false when they submitted them to Judge Yraguen. Continuing knowing it was false they wrote the false fraudulent statement, "disbarment proceedings were initiated against the plaintiff." Pursuant to conspiracy this and other repeated extremely outrageous false libelous statements about the plaintiff concerning his professions and other extremely outrageous conduct and acts were made intentionally and maliciously by Hartford and other defendants herein and by coconspirator attorneys and judges to intimidate the plaintiff with their unlimited power to damage him with impunity and with the intention of causing the plaintiff to suffer severe emotional distress. Defendants Hartford, Hutchens, and Burnham knowingly made the aforementioned false written statements to

Judge Yraguen, a public servant, in connection with an application for a benefit in violation of ORS 162.075 (Unsworn falsification), and as a proximate result of that illegal and criminal act the plaintiff has been proximately injured and damaged as herein alleged. Defendants Hartford, Hutchens, and Burnham, by their aforementioned acts intentionally obstructed, impaired, and hindered the administration of law and judicial function in violation of ORS 162.235, and as a proximate result of those unlawful and criminal acts committed pursuant to conspiracy, the plaintiff was injured and damaged as herein alleged.

26.

In the same document as mentioned in the paragraph preceding this, pursuant to conspiracy subject of this complaint, Hartford, Hutchens, and Burnham wrote, "HARTFORD INSURANCE GROUP has an

authorized registered agent in Oregon. The name and address of HARTFORD INSURANCE GROUP'S registered agent is readily available through the Office of the Corporation Commissioner." That statement was false and fraudulent and defendants knew it was false and deceitful when they submitted it to the Circuit Court for the State of Oregon for the County of Malheur in the case of **EXHIBIT A** on or about July 9, 1986. The statement was false in the Hartford Insurance Group did not at times pertinent herein have a registered agent in Oregon. The statement was deceitful in that the real relevant issue is whether or not Hartford Insurance Group had such an agent in Malheur County, which it did not. At all times pertinent, aforementioned defendants knew that Rule 7,D. **Manner of service**, (3)(b)(ii), Oregon Rules of Civil Procedure, provides, "If a registered agent, officer, director, general partner,

or managing agent **cannot be found in the county** where the action is filed, the summons may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or **by personal service on any clerk or agent** of the corporation or limited partnership **who may be found in the county** where the action is filed;..." (emphasis added). The aforementioned fraudulent statement by defendants Hartford, Hutchens, and Burnham was made to deceive and provide color for the false fraudulent claim that Hartford was not properly served a summons and complaint and that as a consequence the court lacked personal jurisdiction of Hartford.

27.

Pursuant to conspiracy, on or about July 9, 1986, **defendants Hutchens, Burnham, and Hartford** submitted to the Circuit Court of Oregon for the County of Malheur a

fraudulent affidavit by Michael Miller in support of Hartford's motion to quash service. Service upon Hartford was by service upon Miller at his Hartford Insurance Agency in Ontario, Malheur County, Oregon. Miller admitted he was a sales agent for Hartford, but further stated, "I am not authorized and do not represent Hartford Insurance in any other manner, and further am not authorized to accept service on behalf of the Hartford Insurance Group." The defendants aforementioned knew at all times pertinent that service upon a foreign corporation can be obtained by serving an agent doing business for it in the county in which suit is brought if there is no specially authorized agent within the county. Pursuant to conspiracy at no time has Hartford or its attorneys claimed that an agent authorized to accept service of summons was present in Malheur County.

The fraudulent sworn statement was made and submitted to the court by defendants aforementioned knowing it was deceitful to provide color for the fraudulent claim that Hartford was not properly served a summons and complaint and that the court lacked personal jurisdiction of Hartford for that reason.

28.

Pursuant to conspiracy, on July 11, 1986, **Defendants Hartford, Burnham, and Bentz**, knowing that the U.S. District Court for the District of Oregon in Portland, Oregon, lacked any jurisdiction, fraudulently submitted to that court and Judge Redden a "Motion for extension of time to appear." Pursuant to conspiracy, in that written motion they made the fraudulent statement, "The United States Attorney has filed a Petition for Removal, apparently pursuant to 28 USC s 1442, **on behalf of all Federal Defendants."**

(emphasis added). The same statement was repeated in writing by the same defendants to the same court on August 4, 1986, in "Defendant's Hartford Insurance's Motion for Extension of Time to Appear." Defendants Hartford, Burnham, and Bentz knew at all times pertinent herein that the claimed removal was ineffective and fraudulent. All defendants and named coconspirators knew at all times pertinent herein that a party can act personally or "by and through" an attorney but that there is no allowance or provision in the federal rules for anyone not a party to petition for removal "on behalf of" any defendant.

29.

Pursuant to conspiracy, **Defendants Hartford, Burnham, and Bentz** in seeking benefit for Hartford from Judge Redden, a public employee, in support of motions by Hartford, repeatedly knowingly made and

submitted in writing to the U.S. District Court for the District of Oregon on or about July 11, 1986, on or about July 31, 1986, and on or about August 4, 1986, the false and fraudulent written statement that the plaintiff sued members of the Colorado Board of Medical Examiners. The aforementioned defendants knew the statement was false when they wrote it and when they submitted it at each of the aforementioned times, and as a proximate result of those unlawful acts committed pursuant to conspiracy they injured and damaged the plaintiff as herein alleged.

30.

Pursuant to conspiracy with each other and pursuant to the total conspiracy subject of this complaint, **Defendants Hartford, Burnham, and Bentz,** in fraud knowing that the court lacked subject matter jurisdiction, "In support of defendant Hartford Insurance's motion to dismiss,

strike and make more definite certain," submitted to the U.S. District Court for the District of Oregon and Judge Redden on or about August 4, 1986, false affidavits from employees or former employees of Hartford, W.R. Gregg and F.A. Fry. Fry declared "that all of the transactions and activities of Hartford Insurance Dr. Tyler alleges took place between 1971 and May, 1979 took place in Colorado and had consequences only in the State of Colorado." Gregg declared "that all of the transactions and activities of Hartford Insurance Dr. Tyler alleges took place between May, 1979 and June 1, 1983 took place in Colorado and had consequences only in the State of Colorado." Those affidavits were false and fraudulent, and were made and submitted knowing they were false because the plaintiff was living in Oregon when Hartford breached its insurance contract

with the plaintiff and the outrageous conduct of Hartford and its coconspirators was designed to and did inflict injury upon the plaintiff in Oregon during the referred to periods of times. Those were consequences in Oregon. Pursuant to conspiracy, they were also deceitful in that the amended complaint, EXHIBIT A, clearly alleges acts committed in the State of Oregon by coconspirators acting in Oregon. The aforementioned false fraudulent affidavits were made to provide pretext for coconspirator Judge Redden acting pursuant to conspiracy to claim that there was no personal jurisdiction of Hartford in conflict with **Oregon Rules of Civil Procedure Rule 4, C.,D., and I.(2)**. Pursuant to conspiracy, all defendants herein flaunted their illegal power to intimidate the plaintiff by total disregard of legal precedence and rules of civil procedure, including Rule 4. At all

times herein all defendants and coconspirators Turner, Kobbervig, and Redden knew that **Rule 4, ORCP,** in pertinent parts follows:

"**Personal jurisdiction.** A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

C. Local act or omission. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

D. Local injury; foreign act. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D.(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or ...

I. Insurance or insurers. In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property, or risk and in addition either: ... or

I.(2) The person, property, or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; ..."

31.

Pursuant to conspiracy, knowing that the federal court lacked jurisdiction, on or about July 31, 1986, **defendants Hartford, and Burnham** fraudulently submitted to the U.S. District Court for the District of Oregon in the case of EXHIBIT A a "Memorandum in support of defendant

Hartford Insurance's motion against plaintiff's amended complaint" in which they made the false fraudulent written statement, "Plaintiff's professional conduct as a physician was questioned and reviewed by a hospital review committee at Brighton Community Hospital in Brighton, Colorado, the Colorado Medical Society and plaintiff's malpractice insurance carrier in Colorado, HARTFORD." The statement is false in each part and in its entirety and was made repeatedly by the aforementioned defendants knowing it was false. In the same document they repeated the false statement knowing it was false that the plaintiff's malpractice insurance was cancelled. Pursuant to conspiracy subject of this complaint those **false libelous statements** were made by the aforementioned defendants intentionally to insult and damage the plaintiff in abuse of privilege granted lawyers as officers of the court,

and to intimidate him with their completely unchecked, unlimited power to intentionally maliciously injure and damage him. Those false and fraudulent statements made in writing by defendants Hartford and Burnham were made to a public servant, Judge Redden, in connection with an application to obtain the benefit of motions in violation of ORS 162.085, (Unsworn falsification). As a proximate result of the aforementioned unlawful and criminal acts committed by defendants Hartford and Burnham pursuant to conspiracy, the plaintiff was injured and damaged as herein alleged. Defendants Hartford and Burnham by their aforementioned acts intentionally obstructed, impaired and hindered the administration of law and judicial function in violation of ORS 162.235, and as a proximate result of the foregoing unlawful and criminal acts committed

pursuant to conspiracy the plaintiff was injured and damaged as herein alleged.

32.

Pursuant to conspiracy with each other and pursuant to the total conspiracy subject of this complaint, knowing that the federal court lacked jurisdiction, on or about August 11, 1986, in application for benefit of summary judgment, **Charles H. Turner and Judith Kobbervig**, without claiming to represent any defendant and without written order of the court permitting them to intercede as non-parties, **submitted a memorandum** to the U.S. District Court for the District of Oregon in the case of EXHIBIT A. In referring to the case dismissed through fraud and collusion by federal judge Finesilver and judges of the U.S. Circuit Court of Appeals for the Tenth Circuit subject of the lawsuit of EXHIBIT A, the defendants falsely stated in writing

knowing it was false, "The complaint apparently arose out of the cancellation of Tyler's medical malpractice insurance." The Plaintiff Tyler's medical malpractice insurance was never cancelled. Knowing it was false, in the same document Turner and Kobbervig pursuant to conspiracy also repeated the false, fraudulent claim of the judges of the Circuit Court of Appeals, Defendants in EXHIBIT A, that Finesilver dismissed the case because Tyler did not obey an order to amend the complaint in that lawsuit. In truth, there was no order to amend the complaint. Pursuant to conspiracy, in his order denying motion to alter or amend judgment, Finesilver made it clear that the dismissal was because the plaintiff refused to post a bond in the amount of $48,000.00 as ordered. Pursuant to conspiracy, Turner and Kobbervig made the aforementioned false written statements,

knowing they were false, to a public servant, Judge Redden, in connection with an application for a benefit in violation of ORS 162.085 (Unsworn falsification), and as a proximate result of their unlawful and criminal acts committed pursuant to conspiracy the plaintiff was intentionally injured and damaged as herein alleged. By the aforementioned acts committed pursuant to conspiracy Turner and Kobbervig intentionally obstructed, impaired and hindered the administration of law and judicial function in violation of ORS 162.235 (Obstructing governmental or judicial administration), and as a proximate result of their unlawful and criminal acts committed pursuant to conspiracy subject of this complaint the plaintiff was intentionally injured and damaged as herein alleged.

Pursuant to conspiracy, on or about July 21, 1986, the same date Judge Redden ordered a "status conference," subject of following paragraphs, Defendant Carter, an attorney representing Colorado judges and Craig, defendants in EXHIBIT A, submitted to coconspirator Redden and the federal court, knowing it lacked jurisdiction, a "MOTION TO CONTINUE TIME TO RESPOND." In support Carter wrote, "Also, these defendants are uncertain as to the status of an amended complaint ..." (emphasis added).

34.

The aforementioned motion to continue time to respond submitted by Defendant Carter in which he mentioned uncertainty as to the status of the amended complaint was stamped as received by the clerk of the U.S. District Court for the District of Oregon on July 21, 1986. At some time

known to defendants and their coconspirators but unknown to the plaintiff, in the U.S. District Court in Portland, Oregon, pursuant to the conspiracy subject of this complaint, some coconspirator or coconspirators of defendants including coconspirator **Judge Redden fraudulently, falsely, and illegally caused the docket sheet to be changed and/or false entry made to provide false evidence that the aforementioned motion was not received until July 25, 1986.** The defendants herein are responsible for the injury and damages to the plaintiff intentionally caused by the aforementioned extremely outrageous and criminal act committed pursuant to the conspiracy subject of this complaint and in **violation of ORS 162.235**.

35.

Coconspirator Judge Redden had notice of the amended complaint and the date the

bogus petition was filed in the state court (July 9, 1986) in Hartford's "Motion for Extension of Time" submitted July 11, 1986, which Judge Redden granted on **July 21, 1986**. At the same time, and in the same document as the order granting Hartford time, **Judge Redden ordered an "in person status conference"** for September 2, 1986, copy appended hereto as **EXHIBIT F.**

36.

At some time between July 21, 1986, and September 2, 1986, at some place known to defendants but unknown to the plaintiff **defendants Roehr, Carter, Burnham, Hutchens, Bentz, and Hartford Insurance Group, ratified by defendant Anthony Yturri, conspired with each other and with coconspirators Thomas K. Elden and James A. Redden**, not acting in his capacity as judge. In that conspiracy which was and is a part of the total conspiracy subject of this complaint the aforementioned

defendants and coconspirators Elden and Judge Redden in effect agreed that they would fraudulently avoid determining the status of the "complaint" and "amended complaint," that all defendants deceitfully would direct motions and memoranda to the null and void "complaint," that they would deceitfully not amend any motions directed to the null and void "complaint," and that coconspirator Judge Redden fraudulently would use the null and void and non-certified copy of the "complaint" as pretext for his illegal fraudulent decisions and opinions. It was further agreed between the aforementioned defendants, Elden, and Redden that the "in person status conference" scheduled for September 2, 1986, would not consider the issue of the "status of the amended complaint" and no pending motion would be considered or decided. It was further

outrageously agreed in that conspiracy included in the total conspiracy subject of this complaint that the "in person status conference" scheduled for September 2, 1986, in Portland, Oregon, would be used fraudulently and unlawfully to insult, humiliate, and to intimidate the plaintiff, and to intentionally cause the plaintiff severe emotional distress by extreme outrageous conduct, to intentionally cause him mental suffering, and to unlawfully cause the plaintiff loss of time and money and other injury and damage.

37.

Pursuant to the aforementioned conspiracy and the total conspiracy subject of this complaint, defendants Carter, Roehr, Burnham, Hutchens, Bentz, the firm of Yturri, Rose, et al., and coconspirator Elden **did not appear and their clients, defendants in EXHIBIT A, were not**

represented at that ordered conference held in Portland, Oregon, September 2, 1986. Pursuant to conspiracy to intimidate the plaintiff and to obstruct justice by injury and damage to the plaintiff, Defendants Hartford, Burnham, Hutchens, Bentz, and Yturri, Rose, et. al., Carter, and Roehr and coconspirators Elden and Judge Redden, ratified by Anthony Yturri, intended to and did openly flagrantly display the illegal control of coconspirator Judge Redden by the defendants herein and defendants of EXHIBIT A through secret out-of-court conspiracy by their nonappearance in the face of an order to appear. Pursuant to conspiracy the aforementioned defendants flagrantly flaunted their secret conspiratorial knowledge that nothing of substantive importance was to be done at the so-called "status conference." Pursuant to the total conspiracy subject

of this complaint, nothing concerning the "status of the amended complaint" was said or done at the "status conference" September 2, 1986, and none of the pending motions of defendants were considered. Pursuant to the conspiracy subject of this complaint, the nonappearance of defendants aforementioned was flagrantly openly shown to be expected by coconspirator Hon. James A. Redden, judge, by his only casually commenting on such open disregard of his order by the several attorneys. Pursuant to conspiracy, the aforementioned conference September 2, 1986, was designed to injure and damage the plaintiff by fraudulent use of legal proceedings and pursuant to the total conspiracy to obstruct justice subject of this complaint, and it proximately caused the plaintiff to travel from Ontario, Oregon, to Portland, Oregon, and return, a one-way distance of 375 miles and to attend and

participate in extremely outrageous fraudulent legal proceedings, and it proximately caused him severe emotional distress, mental suffering, loss of time and money, and other damage alleged herein. Pursuant to the conspiracy subject of this complaint, Defendants Carter, Roehr, Burnham, Hutchens, Bentz, Anthony Yturri, Yturri, Rose, et al., Hartford, and coconspirator Elden and coconspirator Judge Redden by their aforementioned acts intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of intimidation and economic interference and obstacle in violation of ORS 162.235, a Class A misdemeanor, and as a proximate result of their unlawful and criminal acts the plaintiff was intentionally injured and damaged as herein alleged. With the intent that conduct constituting a crime

punishable as a Class A misdemeanor be performed the aforementioned defendants agreed with each other to engage in or cause the performance of such conduct in violation of ORS 161.450 (Conspiracy), and acts committed pursuant to that conspiracy proximately injured and damaged the plaintiff as herein alleged.

38.

On September 2, 1986, the plaintiff requested from court reporter Jerry C. Harris a transcript of the aforementioned so-called "status conference." Pursuant to conspiracy with defendants herein and the Hon. James A. Redden, acting outside his duties as judge, and pursuant to the total conspiracy subject of this complaint, Harris falsified the transcript, which he mailed to the plaintiff on or about September 5, 1986. That falsification included the omission of a statement by Richard Kuhn,

substituting for attorney Kenneth Roberts as attorney for defendant Thomas Roberts, **that he expected more persons to be there.** Copy of the first transcript submitted to the plaintiff is appended hereto as **EXHIBIT G**, and copy of page 2 of EXHIBIT G with lines 6 and 7 as corrected by coconspirator Harris following request by plaintiff is appended hereto as **EXHIBIT H.** Pursuant to the conspiracy subject of this complaint, **Harris changed the true transcript** to fraudulently conceal the conspiracy subject of the preceding paragraph and to obstruct justice. That extremely outrageous fraudulent falsification of a recording of a court proceeding designed to cause the plaintiff extreme emotional distress and other damage pursuant to conspiracy proximately caused the plaintiff loss of time and money including but not limited to a long distance telephone call and postage and

certification for a confirming letter and proximately caused the plaintiff mental suffering and severe emotional distress and other damage as herein alleged. Pursuant to the total conspiracy subject of this complaint, Harris without lawful authority knowingly concealed and made a false entry in a public record in violation of ORS 162.305, and as a proximate result of that act committed pursuant to conspiracy the plaintiff was intentionally injured and damaged as herein alleged. Pursuant to conspiracy, Harris intentionally obstructed, impaired and hindered the administration of law and judicial function by means of intimidation, economic interference, and obstacle in violation of ORS 162.235, and as a proximate result of the aforementioned unlawful and criminal act committed pursuant to conspiracy the

plaintiff was intentionally injured and damaged as herein alleged.

THIS COMPLAINT IS CONTINUED IN A SECOND VOLUME, ENTITLED PART II OF APPENDIX A

Part II of Appendix A contains:

(1) the rest of this complaint, including its exhibits

(2) copy of its dismissal by Judge Jackson, state court judge, under color of bar by res judicata and collateral estoppel, and

(3) Constitutions, statutes, and rules

SUBMITTED BY: Donald E. Tyler, M.D.
Petitioner, pro se
1092 SW 2nd Ave., Ontario, Or 97914

89-248

FILED
AUG 10 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

No. _____

DONALD E. TYLER, M.D.

Petitioner

v.

ANTHONY YTURRI, CLIFF S. BENTZ, TERESA J. HUTCHENS, CARL BURNHAM, JR., DEBBIE F. CRAIG, FREDERIC P. ROEHR, KENNETH E. ROBERTS, JAMES C. CARTER, KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, HOLMES, DeFRANCQ & SCHULTE, P.C., YTURRI, ROSE, BURNHAM, EBERT & BENTZ.

PART II OF APPENDIX A

OF PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Donald E. Tyler, M.D.
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Pursuant to conspiracy subject of this complaint, on September 8, 1986, **coconspirator Judge Redden** wrote a letter to coconspirator Kobbervig with copies to "all parties," deceitfully and falsely to provide appearance of ignorance of the conspiracy as it related to the amended complaint. **Deceitfully**, without mentioning the fraudulent bogus "status conference" held September 2, 1986, he wrote, "... Setting aside, for the moment, the question of whether or not a removal is in order, **I do wish to be advised as to the then status of the case. ..."** (emphasis added) The "Government's Response to the Court's September 8, 1986 Letter" submitted by coconspirator **Kobbervig** on September 18, 1986, pursuant to conspiracy subject of this complaint fraudulently and deceitfully did not mention the amended complaint and

deceitfully did not state the date the bogus petition for removal was filed in the state court. The truth is, if Redden had really wanted to know the status of the case he would have caused the documents filed in the state court to be removed to the federal court pursuant to **28 USC s.1447.**

40.

On or about October 8, 1986, pursuant to conspiracy between **defendants Hartford, Yturri, Rose, et al., Burnham, and Hutchens, ratified by Anthony Yturri**, and pursuant to the overall total conspiracy subject of this complaint, under color and pretext of **Federal Rule of Civil Procedure 11** fraudulently submitted to the U.S. District Court for the District of Oregon, in Portland, Oregon, knowing that the court lacked jurisdiction, in writing **"MOTION OF DEFENDANT HARTFORD INSURANCE FOR ATTORNEY FEES AND COSTS PURSUANT TO**

FRCP 11," a motion for sanctions against the plaintiff including order that the plaintiff pay Hartford's attorney fees and costs, copy appended hereto as **EXHIBIT I**. The motion did not address itself to claim any inappropriateness of any pleading, motion or other paper signed or filed in the federal court by the plaintiff, but attacked "Plaintiff's complaints and motions before this court." (emphasis added) Deceitfully it did not confine itself to documents filed in the federal court by the plaintiff. At all times pertinent all defendants herein and coconspirator Redden knew that Rule 7 (b)(1) of the Federal Rules of Civil Procedure required, "An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order

sought. ..." At all times herein, all defendants herein knew that the requirement of particularity was subject of many court decisions that ruled that the requirement of particularity is a real substantial requirement and not a matter of form. At all times pertinent, all defendants and Redden knew that the motions for attorney fees by Hartford did not conform to requirements of Rule 7, FRCP, as a motion, and that it should have been summarily denied if rule of law were followed, which pursuant to conspiracy it was not. Submitted pursuant to conspiracy, the motion is fraudulent substantively as well as procedural and is without merit on its face. At all times pertinent defendants and coconspirators Turner, Kobbervig, and Redden knew that Rule 11, FRCP is as follows:

"Every pleading, motion, and other paper of a party represented by an attorney

shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification,

or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both , an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." The plaintiff sought no remedy in the federal court and the only motion the

plaintiff submitted to the federal court was his MOTION TO REMAND. Accompanying the aforementioned motion for attorney fees was an 11 page memorandum with 51 pages of exhibits. Pursuant to conspiracy, the memorandum mentioned the amended complaint once and directed 8 fraudulent objections to the null and void "complaint." Pursuant to conspiracy, the motion was deceitfully directed to the null and void complaint that was filed by the plaintiff in the state court over which the federal court lacked jurisdiction to apply its Federal Rule of Civil Procedure, Rule 11. A dubious copy, not an original signed document, was filed in the federal court by Turner and Kobbervig. Similarly, the amended complaint was filed in the state court, and an non-verified copy was submitted to the federal court as notice of such proper filing in the state court and as a source

of facts. The court did not have an original signed copy of the amended complaint, the plaintiff at all times challenged the jurisdiction of the federal court, and the document, EXHIBIT A, clearly seeks relief in the state court. Its construction was not and is not subject to federal rules of civil procedure. **The motion** to award Hartford its attorney fees **was fraudulent and oppressive in the extreme and was outrageous in the extreme.** At all times herein, all defendants and named coconspirators including Judge Redden knew that Rule 11 could not apply to the signing of documents directed to the state court or the filing of documents in the state court and which had been so ruled in at least one published U.S. court decision, Kendrick v. Zanides, 609 F.Supp. 1162 (1985, ND). Pursuant to conspiracy, the defendants aforementioned

presented in their memorandum as support for their motion a copy of a transcript of fraudulent, abusive, oppressive ranting made pursuant to conspiracy by Judge **Finesilver,** defendant in the case of EXHIBIT A, including reference to his **fraudulent illegal refusal to follow** the clear established **Colorado law that provides that statutes of limitation do not start to run until the last act pursuant to a conspiracy is committed** regardless of included acts which could be barred by statutes of limitation if not committed pursuant to a conspiracy as pronounced by the Colorado Supreme Court in Clark v. Machette, 92 Colo 365, 21 P.2d 182 (1933). At all times pertinent herein, defendants knew that Finesilver was a coconspirator and that his opinion which they presented was the proximate result of fraud and collusion. Pursuant to conspiracy, defendants Hartford,

Burnham, Hutchens, Yturri, Rose, et al., and ratified by Anthony Yturri, fraudulently injected Finesilver's fraudulent false rulings to provide coconspirator Judge Redden similar fraudulent pretext to dismiss the case based upon fraudulent misinterpretations of statutes of limitation, and to provide Redden with fraudulent false pretext to award Hartford attorney fees and costs. Pursuant to the total conspiracy, **the motion acted and acts as a form of extortion:** the plaintiff was threatened to be punished if he submitted any documents or if he acted or acts in any manner to assert or protect his rights in state or federal courts. **It was an open threat that the Plaintiff would be penalized with huge attorney fees of defendants if he submitted any documents whatsoever to federal courts in the case of EXHIBIT A** or any other lawsuit related

to the facts therein. At all times pertinent all defendants in this complaint and coconspirator Judge Redden knew that **the motion and its not being summarily denied violated rights of the plaintiff guaranteed by the U.S. Constitution including the 1st, 5th, 7th, and 14th Amendments.** In their memorandum accompanying the motion for attorney fees, defendants aforementioned pursuant to conspiracy wrote, "All of Plaintiff's allegations derive from a series of events in which Plaintiff's professional conduct as a physician was questioned and reviewed, his staff privileges at the Brighton Community Hospital in Brighton, Colorado were revoked, and consequently his malpractice insurance was not renewed." Each and all of the parts of that sentence are false and defendants who submitted it knew they were false when submitted. Pursuant to conspiracy,

defendants Hartford, Burnham, and Hutchens knowingly made false written statements to a public servant, Judge Redden, in connection with an application for a benefit in violation of ORS 162.085 (Unsworn falsification), and as a proximate result of such unlawful and criminal acts the plaintiff was injured and damaged as herein alleged. By their aforementioned acts defendants Hartford, Burnham, and Hutchens pursuant to conspiracy intentionally obstructed, impaired, and hindered the administration of law and judicial function by means of intimidation, economic interference, and obstacle in violation of ORS 162.235 (Obstructing governmental and judicial administration), and as a proximate result the plaintiff was injured and damaged as herein alleged.

41.

Pursuant to the conspiracy subject of this

complaint, at the so-called "status conference" September 2, 1986, and again in his order denying motion to remand on October 16, 1986, when he had already decided he would dismiss the case, coconspirator Judge Redden openly encouraged the plaintiff to serve the defendants summonses and complaints who were not served before the case was fraudulently claimed to have been removed, and on September 2, 1986, he invited the plaintiff to respond to motions to dismiss extremely outrageously for purposes of entrapment so that he could have some color of claim to jurisdiction, the plaintiff would lose more time and money, and the attorney fees of defendants with which to threaten the plaintiff and which he already planned to illegally award defendants could be even larger.

42.

Pursuant to conspiracy, on February 6,

1987, Judge Redden deceitfully indicated the need for repeat filing of the motion by Hartford for attorneys fees without stating a reason. Transcript of the ex parte hearing appended hereto as **EXHIBIT J,** page 6, line 24 to page 7, line 3. Pursuant to conspiracy the prior motion, EXHIBIT I, submitted before dismissal, was an obvious **illegal threat to prevent** and which prevented the plaintiff from **acting in the federal court** in the case subject of EXHIBIT A. At all times pertinent, defendants Hartford, Hutchens, Burnham, and Yturri, Rose, et al., and Redden also knew that **the prior motion for attorney fees was clearly a general appearance by Hartford.** Redden and the defendants knew at all times pertinent that a general appearance **waives any claim to lack of personal jurisdiction** as pronounced by the Oregon Supreme Court in Anderson v. Guenther, 144 Or 446, 22 P2d 339 (1933).

Pursuant to conspiracy a repeat of the motion was requested in preparation to fraudulently avoid and ignore the existence of the prior motion which not only prevented the plaintiff from responding to the fraudulent acts of defendants subject of this complaint, but was also a general appearance by Hartford.

43.

As a proximate result of the motion to award attorney fees submitted pursuant to conspiracy subject of this complaint to coconspirator Judge Redden who was acting obviously without jurisdiction and who to the plaintiff was an obvious conspirator, the plaintiff acting as a reasonably prudent person submitted no more documents to the court, and made no appearance of any kind, as any document submitted or appearance was reasonably expected by the plaintiff to result in retaliatory exorbitant fees of defense attorneys

ordered by dictatorial judicial fiat to be paid by the plaintiff or other illegal punishment. As a proximate result of the aforementioned motion for attorney fees and its not being summarily denied by coconspirator Redden, the plaintiff was illegally deprived of his rightful use of the U.S. Court for the District of Oregon, and he was illegally threatened to be punished and fined for his rightfully and legally filing a complaint in the Circuit Court of the State of Oregon for the County of Malheur. Pursuant to conspiracy the aforementioned motion and its maintenance was and is an open continuing threat to take the plaintiff's property without due process of law by dictatorial fiat of a judge flagrantly acting without jurisdiction and without regard for common law, statutes, legal precedence, or the guarantees to the people in the amendments of the U.S. Constitution. The illegal

threat is continuing as any related lawsuit the plaintiff might rightfully commence in state or federal courts.

44.

Pursuant to conspiracy subject of this complaint, on February 12, 1987, defendants Hartford, Burnham, Hutchens, Yturri, and Yturri, Rose, et al., again submitted to the federal court knowing it lacked jurisdiction a repeat of their fraudulent motion for attorney fees accompanied by their fraudulent bill. Copy appended as **EXHIBIT K.**

45.

On or about July 29, 1986, knowing that the federal court lacked jurisdiction, pursuant to conspiracy coconspirator Thomas K. Elden, seeking benefit of dismissal for his clients from a public servant, Judge Redden, submitted the following false and fraudulent written claim, knowing it was false: "...any

reference to events that occurred in 1965, they are obviously barred by the Oregon ten year statute of ultimate repose in O.R.S. 12.115." The statute Elden fraudulently cited limits the time for suing for acts of negligence, reading as follows: "In no event shall any action for negligent injury to person or property of another be commenced more than 10 years from the date of the act or omission complained." There is no claim in EXHIBIT A that the clients of Elden or any other defendant acted negligently. The claims against the clients of Elden in EXHIBIT A were for malicious, willful, wanton, intentional acts. They were being sued in the lawsuit of EXHIBIT A for intentional acts subject to statutes of limitation concerning **acts committed pursuant to conspiracy and accumulated acts that produced one indivisible unapportionable injury to the plaintiff.** Cited acts

committed by Elden's clients were committed on or about May 2, 1986. (paragraphs 53 and 54, EXHIBIT A). At all times pertinent herein all defendants and named coconspirators knew that the action was not barred by any statute of limitations on the face of the complaint, and that the defense must be raised by answer in accord with holdings of the Oregon Supreme Court in Davis v. Davis, 20 Or 78, 25 P. 140 (1890), and in Buckman v. Hill Military Academy, 190 Or 194, 223 P2d 172 (1950). No defendant answered the complaint to raise the defense of statute of limitations. Coconspirator Elden intentionally obstructed, impaired and hindered the administration of law and judicial function in violation of ORS 162.235 (Obstructing governmental or judicial administration), and as a proximate result of his unlawful and criminal acts committed pursuant to

conspiracy subject of this complaint the plaintiff was intentionally injured and damaged as herein alleged.

46.

Pursuant to conspiracy, on August 4, 1986, defendant Carter submitted fraudulent written statements to the U.S. District Court for the District of Oregon in Portland, Oregon, in fraud knowing the court lacked jurisdiction. Knowing it was deceitful and fraudulent Carter stated, "Compton v. Ide, 732 F2d 1429, 1432 (9th Cir 1984) held that 'mere continuance of a conspiracy beyond the date when injury or damage occurs does not extend the statute of limitations.'" That deceitfully was submitted as applicable. The applicable and true holding is the following sentence where the court held that "To establish a continuing violation, continued unlawful acts must be demonstrated." At all times pertinent, Carter, other defendants, and

all named coconspirators including Redden knew that the plaintiff clearly alleged in EXHIBIT A unlawful acts committed in May, 1986, in furtherance of the conspiracy. Continuing pursuant to conspiracy, Carter fraudulently wrote, "in Hoffman v. Halden, 268 F2d 280, 302 (9th Cir 1959), it was held that when the plaintiff alleged the existence of a 'civil conspiracy to violate the Civil Right Act'," (that part of the quote cannot be confirmed), "the statute of limitations runs from the overt act alleged to have caused damage." Pursuant to conspiracy, that written statement was deceitful and taken out of context to claim that statutes of limitation commenced to run with the first damaging act committed pursuant to conspiracy. In truth, on the following page the court held, "the last overt act alleged from which damage could have flowed, this date becomes the last date

from which a statute of limitations might run." The aforementioned deceitful acts by defendant Carter were committed pursuant to conspiracy to provide pretext for dismissal of the lawsuit against defendants in EXHIBIT A. By his deceitful acts committed pursuant to conspiracy, defendant Carter intentionally obstructed, impaired and hindered the administration of law and judicial function in **violation of ORS 162.235**, and as a proximate result of his unlawful acts committed pursuant to conspiracy subject of this complaint the plaintiff was intentionally injured and damaged as herein alleged.

47.

Pursuant to conspiracy, at all times pertinent the defendants and all coconspirators named herein including Judge Redden falsely and deceitfully appeared confused and ignorant of (a) the date the amended complaint was

filed, July 7, 1986, and (b) the date the bogus petition for removal was filed, July 9, 1986, in the State court. The truth is all of them including coconspirator Judge Redden received early and repeated notice of those dates and their significance. Copies of the **amended complaint** that were mailed to defendants in EXHIBIT A, lawyer and judge clients of defendants herein, were each stamped by the court with the time and date it was filed. **The time of filing at 8:33 A.M., Monday, July 7, 1986**, after a three day holiday put the **lawyer-defendants** on **notice** that it was probably filed before any mail was received for filing from Turner and Kobbervig even if they had mailed a copy of their bogus petition to the state court in Vale, Oregon, on the date they filed it in federal court, Thursday, July 3, 1986. Turner and Kobbervig were notified by the clerk of the state court that the copy of

their petition was received July 9, 1986, by letter to them on that date. In Hartford's MOTION TO QUASH SERVICE AND DISMISS PLAINTIFF'S AMENDED COMPLAINT filed in the Circuit Court dated July 9, 1986, Defendants Hartford, Hutchens, Burnham, Yturri, Rose, et al. stated "Hartford Insurance has not as yet been served with Plaintiff's Amended Complaint. Hartford Insurance has knowledge of Plaintiff's Amended Complaint only through the courtesies of this court." Being informed by the court of the filing of the amended complaint and not the bogus petition for removal the inference is clear that the aforementioned lawyer-defendants and Hartford knew the amended complaint was filed before the bogus petition for removal was filed in the state court. In a motion submitted to the federal court and Judge Redden dated July 11, 1986, Defendants Hartford, Bentz,

Burnham, and Yturri, Rose, et al., seeking additional time to respond to the AMENDED COMPLAINT stated, "The Petition for Removal was filed on July 9, 1986 in the Circuit Court of the State of Oregon for the County of Malheur. This is thus the date the Petition was effective. 28 USC s 1446(e)." (emphasis added) That document notified Judge Redden of facts of date of removal and that Hartford attorneys knew that they must respond to the amended complaint, (which was received by Hartford on July 8, 1986), and Bentz certified that he sent a copy to Defendant Kobbervig. Bentz, Burnham, Hartford, and Yturri, et al., repeated the same statements, including that the date the petition was effective was July 9, 1986, in another written motion directed to the federal court and Judge Redden dated August 4, 1986. Bentz certified that he sent copies of that motion on that date to Defendants

Roehr, Turner, and Kenneth E. Roberts and to coconspirators Kobbervig and Elden. They were all directly informed on or before August 6, 1986, that the bogus petition was not filed in the state court until July 9, 1986. On August 7, 1986, the plaintiff submitted to the U.S. District Court, to Redden, and to defendants Carter, Kenneth Roberts, Burnham, Bentz, Yturri, Rose, et al., and Roehr and to coconspirators Turner, Kobbervig,, and Elden copies of bogus documents filed in the state court by Turner and Kobbervig including the copy of the so-called petition for removal (without the accompanying complaint), notice of filing of the petition, and cover letter. Each of the copies of the documents was stamped that showed that the filing in the state court by Turner and Kobbervig was July 9, 1986. On August 13, 1986, the plaintiff mailed to the clerk of

the U.S. Court, Redden, and to each and all of the aforementioned defendants and coconspirators **documents that notified them that the Amended Complaint was filed in the state court on July 7, 1986.**

48.

Knowing that the removal was fraudulent and ineffective, and knowing that the original or certified copies of the complaint or amended complaint had not been removed to the federal court from the state court, knowing that the federal court lacked subject matter jurisdiction, and knowing that the "complaint" was null and void and replaced by an amended complaint, on or about July 29, 1986, pursuant to conspiracy subject of this complaint, coconspirator **Elden** fraudulently submitted to the U.S. District Court for the District of Oregon and to coconspirator Judge Redden motion to dismiss as follows: "Come now

defendants Carl R. Kostol, Allan L. Ferrin, David E. Reid, and Howard I. Bobbitt (state defendants) and respectfully move the court pursuant to F.R.C.P. 12(b)(6) to **dismiss the complaint which has been removed to federal court** for failure to state a claim upon which relief can be granted. ..." (emphasis added) It was clearly the null and void "complaint" and the non-certified copy filed by coconspirators Turner and Kobbervig to which the motion was fraudulently directed. Pursuant to conspiracy the motion was never amended even after Elden received written notice from the plaintiff that the "complaint" was replaced by an "amended complaint" prior to the bogus removal. On July 8, 1986, Elden telephoned the plaintiff and was advised that an amended complaint was filed the day before. It was apparent that neither plaintiff or Elden had been

notified that a petition for removal was filed. The motion submitted by Elden clearly had no legitimate legal purpose and pursuant to conspiracy was a fraudulent use of legal proceedings to intentionally illegally damage and injure the plaintiff. By the aforementioned act committed pursuant to the conspiracy subject of this complaint, coconspirator Elden intentionally obstructed, impaired and hindered the administration of law and judicial function by economic interference and obstacle in violation of ORS 162.235, and as a proximate result of that unlawful and criminal act committed pursuant to conspiracy the plaintiff was injured and damaged as herein alleged.

49.

Pursuant to conspiracy, knowing the federal court lacked jurisdiction, and knowing that the "complaint" was a nullity, on or about August 4, 1986,

Defendants Roehr and Craig, both lawyers, fraudulently submitted to the U.S. District Court for the District of Oregon in the case of EXHIBIT A "Motions of Defendant Debbie Freepons Craig to dismiss plaintiff's complaint." Pursuant to conspiracy, the word "complaint" was fraudulently used repeatedly in the five page document without mention of the amended complaint which Craig had been served. Pursuant to conspiracy, the motion was never amended even after it was provable that they had actual written notice the date of claimed removal was July 9, 1986. Defendant Roehr and Craig intentionally obstructed, impaired and hindered the administration of law and judicial function in violation of ORS 162.235, and as a proximate result of the foregoing unlawful and criminal acts committed pursuant to conspiracy the plaintiff was injured and damaged as

herein alleged.

50.

Knowing that the federal court lacked jurisdiction and that the complaint filed in that court was a nullity, **Defendant Carter** representing Colorado State judges, and pursuant to **conspiracy with Defendants Smith and Ruland** and pursuant to the total conspiracy subject of this complaint, knowing that the federal court and coconspirator Judge Redden lacked jurisdiction, on or about August 4, 1986, fraudulently submitted to the U.S. District Court for the District of Oregon in the case of EXHIBIT A written motions to dismiss the plaintiff's "claims" against defendant Colorado judges including Smith and Ruland. Pursuant to conspiracy, in the motion the words "complaint" or "amended complaint" deceitfully were not used, but in the 12 page memorandum submitted by those

defendants in support of the motion, **fraudulently directing their motion to the null and void complaint**, they wrote, "Defendants have moved for an order dismissing plaintiff's **complaint** ..." (emphasis added). Pursuant to conspiracy, they fraudulently repeatedly referred to the void complaint without mention of the amended complaint. Pursuant to conspiracy, in support of the aforementioned motion defendants Carter, Smith and Ruland submitted **fraudulent affidavits by judges including Smith and Ruland,** defendants herein and in EXHIBIT A, each of whom fraudulently **directed his sworn declarations to the "complaint"** although each had been served the amended complaint and knew that the "complaint" was a nullity. By their aforementioned acts committed pursuant to conspiracy, Defendants Carter, Smith and Ruland intentionally obstructed, impaired and

hindered the administration of law and judicial function by means of economic interference or obstacle in violation of ORS 162.235, and as a proximate result of those illegal and criminal acts committed pursuant to conspiracy the plaintiff was injured and damaged as herein alleged.

51.

On February 6, 1987, pursuant to conspiracy, acting without jurisdiction, coconspirator Judge Redden unlawfully and illegally dismissed the plaintiff's lawsuit of which EXHIBIT A is the amended complaint. Pursuant to conspiracy subject of this complaint, each and every holding of coconspirator Redden in EXHIBIT J and in his written opinion, EXHIBIT L, is the result of fraud and collusion, and made with coconspirator Judge Redden knowing that he lacked jurisdiction of the lawsuit of which EXHIBIT A is the amended complaint. Pursuant to conspiracy,

coconspirator Redden falsely, fraudulently and maliciously slandered and libeled the lawsuit of EXHIBIT A, and provided pretext for anticipated subsequent judges to cover him by doing the same types of false, fraudulent acts.

52.

Pursuant to conspiracy, coconspirator Judge Redden delayed issuing his written opinion until March 4, 1987, copy appended hereto as **EXHIBIT L.** Coconspirator Redden's fraudulent order of dismissal issued pursuant to conspiracy is appended as **EXHIBIT M** and his order of entry of judgement is appended as **EXHIBIT N.** His dismissal, entry of judgment, and opinion are the the result of fraud and collusion,and illegally were determined and issued pursuant to the conspiracy subject of this complaint.

53.

Pursuant to conspiracy, Redden's Opinion,

EXHIBIT L, is filled with false fraudulent fabrication of "facts" which he knew were false. Pursuant to conspiracy, some of his "fact" statements were fraudulently adopted from false fraudulent statements of lawyers who are defendants herein. Defendants and all named coconspirators including Judge Redden at all times pertinent knew that at this stage of proceedings the facts were those found in the Amended Complaint and those found in affidavits. Pursuant to conspiracy coconspirator **Judge Redden illegally denied the plaintiff benefit of the facts alleged in the Amended Complaint which at this stage of the proceedings must be accepted as true.** Pursuant to conspiracy, Redden's fraudulent opinion is not based upon affidavits or the Amended Complaint. Pursuant to conspiracy, each and every holding and ruling including dismissals by Redden are fraudulent. **Redden** acted

pursuant to conspiracy without jurisdiction which is on the face of the record. On the face of the record the petition for removal was inadequate and ineffective, and on the face of the record the judge did not have the original or certified copies of either the complaint or amended complaint. Lacking subject matter jurisdiction, the court lacked personal jurisdiction of all defendants of EXHIBIT A. In the following analysis, the plaintiff is directing his exposures to internal inconsistencies and frauds and to the acts of the judge as if he had subject matter jurisdiction which he did not. Some but not all of the complicated frauds and fraudulent acts committed by Redden pursuant to conspiracy in his opinion follow.

(1) Redden's characteristics of defendants are false and he knew his statement concerning them was false.

Contrary to his false statement, none of the defendants of EXHIBIT A are members of the medical staff of Brighton Community Hospital, the Colorado Board of Medical Examiners, or members of the Oregon Board of Medical Examiners. There is no legal evidence that any defendant is a member of the Colorado Medical Society. Redden fraudulently omitted characterizing several defendants.

(2) Redden stated, "The United States removed the case to federal court on July 3, 1986 on behalf of a federal judge who had been served, defendant Finesilver, and other federal officers and employees who had not been served." The statement is totally false in all its parts, Redden knew it was false when he issued his opinion, and it is fraudulent. The sentence is separated into its parts as follow:

(a) In truth, the bogus petition does not

claim that the United States removed the case. Redden knew when he issued the opinion that the right to remove pursuant to 28 USC s.1442 (the statute related to removal by federal employees), copy appended hereto as **EXHIBIT O**, is limited to served defendants. At all times pertinent, Redden knew that the United States was not a defendant and that even if the United States did remove it, which it did not, there was no jurisdiction of the United States in the state court and the only jurisdiction of the federal court was derivative and the case would necessarily be remanded as pronounced in Martinez v. Seaton, 285 F2d 587 (10th Cir, 1961). Redden changed his finding in his opinion denying plaintiff's motion to remand in which he ruled that Finesilver removed the case, (**paragraph 15 above**). That claim lacked deceit value in that it was too transparently false and fraudulent

to even those not legally trained.

(b) The case was not removed as falsely and fraudulently stated by Redden, who knew his statement was false when the opinion was issued. The petition was totally defective in that it was not filed in the federal court by a defendant, it was not verified, it was not accompanied by a bond, and a copy was not filed in the state court by a defendant. On the face of the record the lawsuit was not removed to the federal court.

(c) The date of July 3, 1986, as the claimed date of removal is false and fraudulent and Redden at all times pertinent herein knew that it was false and fraudulent. On that date, July 3, 1986, coconspirators Turner and Kobbervig filed their bogus petition for removal in the federal court. They filed a copy of their bogus petition in the state court on July 9, 1986. The removal statute,

EXHIBIT D, clearly states that removal is effected only upon filing of a copy of the petition in the state court by a defendant, and Redden knew that fact of law and he knew the date the bogus petition was filed in the state court when he issued his fraudulent opinion. Pursuant to conspiracy subject of this complaint, Redden falsely and fraudulently claimed the removal was **July 3, 1986**, knowing it was false to avoid the fact of the amended complaint being filed in the state court by the plaintiff on **July 7, 1986**, which was prior to bogus ineffective removal on **July 9, 1986**. Pursuant to conspiracy, in his opinion Redden fraudulently avoided referring to the "complaint" or the "amended complaint" except he **fraudulently ruled that the "complaint" was barred by statutes of limitation**, page 6, line 2, EXHIBIT L, and he referred to both the complaint and

amended complaint on lines 15-20 on page 7 in language that **admits his knowledge that the amended complaint was filed before the bogus removal** and that he distinguished between "complaint" and "amended complaint."

(d) Pursuant to conspiracy, Redden's statement that the petition was removed "on behalf of" a federal judge is false and fraudulent and Redden knew it was false when he issued the opinion. Without prior court order there is no provision in the rules or removal statutes for anyone to act "on behalf of" a party in a lawsuit, and Redden knew that at all times pertinent herein.

(e) Pursuant to conspiracy, Redden's statement that the petition was removed "on behalf of a federal judge who had been served, defendant Finesilver, and other federal officers and employees who had not been served" is fraudulent. There is no

legal evidence in the record that any federal officer or employee including Finesilver was served or was not served a summons and complaint. Coconspirator Judge Redden knew when he issued his opinion that Turner and Kobbervig in their bogus non-verified petition made no reference to a summons being served on Finesilver, which is required for personal jurisdiction and has been so pronounced by the Oregon Supreme Court in South State Inv. Co. v. Brigum, 43 Or App 273, 602 P2d 1084 (1979). The removal statute (EXHIBIT D) 26 USC s.1446 (a) requires the moving party to file with the petition for removal "a copy of all process, pleadings and orders served upon him ..." Turner and Kobbervig did not file a copy of any summons. Redden had to presume that Finesilver had not been served a summons. At all times Redden also knew that in addition to other defects in the bogus

petition, the bogus petition failed in the requirement that a petition is required to state with certainty even the date the removing party was served a summons as pronounced by a federal court in Jennings v. Cantrell, 392 F.Supp. 563 (ED, Tenn, 1974). Pursuant to conspiracy, in his opinion, EXHIBIT L, page 3, lines 12-17, Redden fraudulently omitted reference to the date he fraudulently claimed Finesilver was served. Redden knew when he issued his fraudulent opinion that proper **service of a summons and complaint on the federal officer in the state court is a precondition to removal under 28 U.S.C. s.1442** and that it was so found by federal courts in IMFC Professional Services of Florida, Inc., 676 F2d 152 (5th Cir, 1982), Housing Authority of City of Atlanta, GA. v. Millwood, 472 F2d 268 (5th Cir, 1973), and in Martinez v. Seaton, 285 F2d 587 (10th Cir, 1961).

Pursuant to the conspiracy subject of this complaint, **Redden fraudulently stated that Finesilver was served** to provide color to act as to defendants who were not federal employees since legal precedence clearly required remand to the state court when the federal defendant was not properly served a summons and copy of the complaint. **Redden knew that without personal jurisdiction of Finesilver he had no subject matter jurisdiction and therefor no personal jurisdiction of any of the parties of the lawsuit of EXHIBIT A.** That lack of jurisdiction in the federal court is on the face of the record.

(e)(1) Pursuant to conspiracy coconspirator Jerry C. Harris presented to the plaintiff the transcript of the hearing of February 6, 1987, copy appended as **EXHIBIT J.** On page 4, lines 2-4, the transcript reads, " MS. KOBBERVIG:

Judy Kobbervig, representing the three circuit and one district court judges; Judge Silverstein has never been served in this case." Ms Kobbervig had no connection with state judge Silverstein. The inference is clear that in truth she said "Judge Finesilver has never been served in this case." That did not correspond to Redden's fraudulent claim that Finesilver had been served. Pursuant to conspiracy between court reporter Harris and Redden and pursuant to the total conspiracy subject of this complaint, Harris illegally changed the original and true transcript. (See paragraph 38 above for similar act, a method of criminal conduct also employed by defendants in EXHIBIT A, paragraph 27 therein.)

(3) Pursuant to conspiracy, Redden falsely and fraudulently stated, "Plaintiff filed a motion to remand the

case to state court on August 8, 1986." Redden knew that was false. The plaintiff filed a motion to remand by certified mail on July 15, 1986, the return acknowledgment of receipt is stamped July 16, 1986, and it was docketed as received in the federal court on July 17, 1986.

(4) Redden stated in reference to Roberts, defendant in the case of EXHIBIT A, "Plaintiff's cases all stem from the failure to renew his hospital privileges at the Brighton Community Hospital in Brighton, Colorado approximately twelve years ago." That statement is false and fraudulent and Redden knew that it was false and fraudulent. The word "stem," according to a dictionary in this context means, "to derive from or originate in." There is no place in the record of this or any other lawsuit that justifies that statement. It is not only false, but it is fraudulent in that it fraudulently

implies that claims against Roberts in EXHIBIT A relate primarily to the Brighton Hospital by conspiracy and not as a result of his direct conspiratorial involvement with lawsuits against Hartford. Roberts' illegal activities subject to the lawsuit of EXHIBIT A relate to lawsuits against Hartford for libel, other unlawful acts of Hartford in conspiracy with a medical society committee to not renew plaintiff°s malpractice insurance, an antitrust action because of an illegal contract between Hartford and the Colorado Medical Society to obstruct justice in essentially all malpractice lawsuits and lawsuits by physicians against physicians, and a collusive lawsuit instituted by Hartford against the plaintiff.

(5) Pursuant to conspiracy, Redden further stated, "Plaintiff has alleged in the instant action that Mr. Roberts acted pursuant to a conspiracy by supplying the

Colorado Board of Medical Examiners deceitful, false information concerning the plaintiff." The statement is fraudulent in that it minimizes the claim of paragraph 39 of the Amended Complaint, EXHIBIT A, by not noting the nature of the information which related to the fraudulent lawsuit by a patient alleging malpractice that was commenced in collusion and at the instigation of Hartford, and by not noting the nature of the antitrust action by the plaintiff against Hartford and the medical society. Pursuant to conspiracy, the statement by Redden is fraudulent in that it omits the allegations against Mr. Roberts found on lines 1-9, page 18 of the Amended Complaint. Allegations there, avoided by Redden, relate to fraudulent documents submitted to judges of the Colorado Appeals Court by Roberts in participation in conspiracy with them and others to

dismiss a lawsuit against Hartford and others by means of fraudulent application of an immunity statute to persons not covered in the statute.

(6) The illegal dismissal of claims against Roberts by Redden pursuant to conspiracy with claim of lack of personal jurisdiction over him relates to fraudulent acts of Roberts and his attorney Kenneth E. Roberts related in paragraph 21 and other paragraphs herein. At all times pertinent Redden, defendants K. Roberts, and T. Roberts knew that acts committed by coconspirators in Oregon provided a legal basis of personal jurisdiction of T. Roberts in Oregon.

(7) Pursuant to conspiracy, in fraudulently characterizing the acts of the former members of the Board of Medical Examiners on page 7 of his opinion, Redden omitted the fact that the former members of the board and their lawyer, Bobbitt,

acted to continue the conspiracy subject of EXHIBIT A by not revealing the reason they refused in 1965 to issue a certificate of annual registration of the plaintiff's license to practice medicine, a clerical function which is a continuing illegal denial of plaintiff's right to use his license to practice medicine and surgery in Oregon. **The acts of refusing to supply information were committed in 1986 as alleged.** What they "stem" from is irrelevant as to statutes of limitation. Redden knew when he issued his fraudulent opinion that their acts "stem" from something known only to the defendants which they refused to reveal in 1986 and that refusal to supply information causes the conspiracy subject of EXHIBIT A to continue as alleged in EXHIBIT A.

(8) Redden fraudulently bars action against "state defendants" under pretext that the allegations are of acts which

"stem" from the past. Redden knew that what those acts stem from is irrelevant.

(9) Redden fraudulently characterized defendants Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., and Howard I. Bobbitt, a lawyer, as "state defendants." The allegations against them are for acts committed at times when they were not members of the Board of Medical Examiners or state employees. That false fraudulent characterization is connected to fraudulent acts of coconspirator Assistant Attorney General for the State of Oregon, Thomas K. Elden. Under pretext of that false, fraudulent characterization, and Redden's false and fraudulent characterizations of the allegations, Redden fraudulently dismissed the action against them under pretext of a two year Oregon statute of limitation that relates to government officials. Even if his characterizations were correct, which

they were not, acts alleged in the complaint were in May, 1986, and acts committed pursuant to conspiracy subject of 42 USC s.1983, a statute providing for damages due to violations of Constitutional rights, do not start to run until the last overt act, and Redden knew that. Redden knew that no statute of limitation commences to run until the date of the last act committed pursuant to conspiracy or the last of the accumulated acts that produce an indivisible injury. Pursuant to conspiracy, Judge Redden, coconspirator of defendants herein, fraudulently and illegally **dismissed as to these and other defendants herein under pretext that the lawsuit of EXHIBIT A was commenced after the statutes of limitations had expired knowing that he lacked absolutely essential evidence to rule on any statute of limitation.** Because no records were removed from the

state court **he did not have legal evidence as to the date the lawsuit of EXHIBIT A was commenced**, and at all times pertinent herein Redden knew that he lacked the essential date of the filing of the complaint in the state court which commenced the lawsuit of EXHIBIT A. Pursuant to conspiracy, on page 3, line 12, of his opinion, EXHIBIT L, Redden wrote, "The case was initially filed in Malheur County, Oregon." **Pursuant to conspiracy, he deceitfully did not state the date.** Redden knew that he did not even have an affidavit or other legal evidence as to when the lawsuit was commenced by that filing. The only persons who could provide that absolutely essential legal evidence was the clerk of the state court and the plaintiff. Pursuant to conspiracy, **to provide some color or pretext for such a date, which he knew, he asked for that date in open court**

in the presence of the plaintiff on September 2, 1986, EXHIBIT G, page 6, line 11. He did not obtain the necessary certain date. The other essential date in ruling on a statute of limitations is the date the statute of limitations commenced to run. Pursuant to conspiracy Redden deceitfully avoided determining that date in each and every instance of rulings on statutes of limitation and he deceitfully referred to remote irrelevant dates.

(10) Redden's ruling as to failure to state a claim for relief is as false and fraudulent as the preceding acts, and particularly considering that his rulings relate to the null and void "complaint" and not the amended complaint which has technical changes to avoid pretext for such a ruling. Pursuant to conspiracy, his acts were intentionally committed to maliciously slander the lawsuit of EXHIBIT A.

(11) Pursuant to conspiracy, Redden fraudulently stated, "Moreover, the motion is granted as to plaintiff's third claim for relief because the claims of civil rights violations refer to events in Colorado and have no reference to the Oregon state defendants." At all times pertinent coconspirator Redden knew that any act in a state by a coconspirator is a "constructive presence" in the state by all conspirators as pronounced by the U.S. Supreme Court in Hyde v. U.S., 225 U.S. 347, 32 S.Ct. 793, 56 L.Ed. 1114 (1912). At all times pertinent Redden knew that all coconspirators were responsible for all acts committed pursuant to the conspiracy wherever they were committed. Pursuant to conspiracy Redden devised this second fraudulent reason for dismissing the civil rights claim because he knew that dismissal of the civil rights action based upon statutes of limitation was in

direct conflict with a case in the Ninth Circuit (the superiors of Redden), Hoffman v. Halden, 268 F2d 280 (1959) which held that the statutes of limitation for civil rights violations do not commence until the date of the last act committed pursuant to conspiracy.

(12) On page 6 of his opinion, **EXHIBIT L**, in reference to Hartford, Redden falsely and fraudulently repeated the false fraudulent statements of defendants herein as to facts of the case. Coconspirator Judge Redden at all times pertinent herein knew the difference between facts upon which to base opinions and decisions and facts as stated by lawyers. Redden, knowing it was and is false, falsely and fraudulently stated, "Plaintiff's professional conduct as a physician was apparently questioned and reviewed by a hospital review committee at Brighton Community Hospital." That

statement by Redden pursuant to conspiracy is extremely outrageous, irresponsible, false, libelous, and was made knowing it was not true in reckless disregard of the truth and of the rights and feelings of the plaintiff and to intimidate him pursuant to conspiracy. Pursuant to conspiracy, Redden's fraudulent statement that "Plaintiff reportedly refused to cooperate ..." flagrantly made to intentionally insult and intimidate the plaintiff with his abuse of power pursuant to conspiracy is like disparaging a woman for not cooperating with a rapist. Redden's false fraudulent statement pursuant to conspiracy that "consequently his liability insurance coverage was cancelled," was made by Redden knowing it was false to intimidate the plaintiff by his unlimited power to libel the plaintiff in his professions.

(13) Pursuant to conspiracy Redden

deceitfully wrote, "I need not reach the motions to strike and make more definite and certain ..." in truth because that motion was directed to the AMENDED COMPLAINT and to rule on that particular motion could require direct unambiguous reference to the amended complaint.

(14) Pursuant to conspiracy Redden falsely and fraudulently stated, knowing it was false, as to Hartford, "personal jurisdiction is lacking under Rule 4 of the Oregon Rules of Civil Procedure. Defendant Hartford has had no contact with Oregon which is relevant to the cause of action." At all times pertinent Redden knew that the truth is that ORCP Rule 4, C,D,I(2), quoted in **paragraph 30** above, provides for personal jurisdiction of Hartford. Further, Redden knew that the general appearance of Hartford in making its motion for attorney fees waived any claim that the court lacked personal

jurisdiction. The fraudulent dismissal of Hartford because of no contact with the plaintiff in Oregon is related to frauds and collusion addressed above.

(15) Pursuant to conspiracy, and inconsistent with his claim of no personal jurisdiction of Hartford, Redden, on page 6 of EXHIBIT L in reference to Hartford, fraudulently ruled the **"complaint"** is barred by **statutes of limitation.** Pursuant to conspiracy, Redden fraudulently directed his holding to the null and void "complaint." If Redden believed that there was no personal jurisdiction in the state court prior to the bogus removal or by its appearances in the federal court he could legally proceed no further. Pursuant to conspiracy he made additional rulings as to why the action is dismissed as to Hartford to slander the lawsuit and to illegally threaten the plaintiff with "sanctions" if

the plaintiff again seeks remedy in any way for acts alleged in EXHIBIT A. The statement that the action is barred by statutes of limitations is as fraudulent as his other acts. Pursuant to conspiracy, Redden presented fraudulent "findings" upon which to fraudulently claim basis for his opinion and dismissals. **Pursuant to conspiracy Redden did not make the essential findings as to when the statutes of limitations commenced running and when the lawsuit was commenced. Redden knew that he had no competent evidence before him as to when the initial complaint was filed in the state court** upon which to base any claims concerning statutes of limitation. Pursuant to conspiracy, Redden fraudulently cited ORS 12.110(1) which is a two year statute of limitations for any injury to the person or rights of another. An issue is when such a statute commences

to run. At all times pertinent defendants and Redden knew that in the instant case alleging conspiracy and alleging acts causing one indivisible injury statutes of limitation did not start to run until the last alleged act, May, 1986. (paragraph 53 of EXHIBIT A). Other acts cited in EXHIBIT A, paragraph 35 (June 15, 1984), paragraph 38 (July 18, 1984), were clearly within the 2 year period with the action of EXHIBIT A being commenced June 3, 1986. Pursuant to conspiracy, Redden disregarded the allegation of paragraph 52 (b) in which the plaintiff alleged damage from illegal closure of Courts in Colorado where the corresponding statute of limitations is 6 years. That fact is an issue for the jury since Redden fraudulently cut off acts prior to two years in conflict with legal precedence regarding conspiracy and acts producing one indivisible injury. Pursuant to

conspiracy, Redden fraudulently cited ORS 659.045(1) entitled, "Complaints of discrimination in housing or in place of public accommodation or in private vocational, professional or trade school." The reference to that statute is completely inappropriate and an insult. Pursuant to conspiracy, Redden fraudulently cited ORS 12.115(1) which is addressed in **paragraph 45** above. Redden knew that the statute barring claims for negligent acts after 10 years is inapplicable to the claims of EXHIBIT A because they are for damage caused by intentional acts, not negligent ones. In breaking down the complaint into parts and not considering the totality of the conspiracy, **Redden deceitfully did not mention ORS 12.080(1) which is six years for actions on contract.** Breach of insurance contract by Hartford occurred on March 6, 1981, alleged in paragraph 42 of

EXHIBIT A which was clearly within that statute of limitation, and now subject of damages of this complaint due to 6 years having now passed due to obstruction of justice. Pursuant to conspiracy, Redden did not mention that the statute of limitations for civil rights actions, the third claim for relief, is six years in Oregon. Clark v. Musick, 623 F2d 89 (9th Cir, 1980); Plummer v. Western International Hotels Co., Inc., 656 F2d 502 (9th Cir, 1981). Pursuant to conspiracy, he falsely and fraudulently claimed the entire "complaint" is barred by the two year statute cited.

(16) Pursuant to conspiracy, on page 6, EXHIBIT L, in reference to Hartford, Redden dismissed the 1st and 3rd claims "because they fail to state a claim upon which relief can be granted as to this defendant." Pursuant to conspiracy, that dismissal was fraudulently directed to the

null and void complaint and not the amended complaint. It is fraudulent also in that Hartford as a coconspirator with judges is responsible for acts violating the plaintiff's civil rights under color of Colorado state law, which principle Redden knew was pronounced by the U.S. Supreme Court in Dennis v. Sparks, 101 S.Ct. 183, 449 U.S. 24, 66 L.Ed.2d 185 (1980).

(17) In reference to defendant Craig, pursuant to conspiracy Redden deceitfully stated, "Ms Craig was law clerk to Judge Ruland ... All claims brought against her in this case arise out of actions which allegedly occurred by virtue of this employment." Redden's statement is deceitful in that it implies but does not rule that Craig was acting within her employment when she acted in Oregon, pursuant to conspiracy. Redden's dismissal as to Craig based upon judicial

immunity is fraudulent and he knew that it was in direct conflict with holdings by the U.S. Supreme Court in Nevada v. Hall, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979) and the Colorado Court of Appeals which adopted its holdings including, "...sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities. ... state sovereignty ends at the state border." Peterson v. State of Texas, ___Colo App___, 635 P2d 241,242 (1981). Redden knew that Judge Ruland had no jurisdiction whatsoever to act in Oregon and consequently on its face had no judicial immunity for acts committed in Oregon; and Redden knew that Craig had no immunity for acts she committed in Oregon derived from working for a Colorado judge. Pursuant to conspiracy, Redden

fraudulently stated, "... dismiss... plaintiff's failure to provide notice and file within the applicable statute of limitations." Pursuant to conspiracy, Redden deceitfully did not state the notice to which he referred and to which statute of limitation he relied upon. Redden knew that the Colorado notice requirements and statute of limitations concerning suing employees of the state of Colorado is part of its "Colorado Governmental Immunity Act" which is not applicable to lawsuits in Oregon courts for acts committed in Oregon or so connected with Oregon as to give jurisdiction to Oregon courts. Redden knew that state governmental immunity acts are derived from the doctrine "that no sovereign may be sued in its own courts without its consent, but it affords no support for a claim of immunity in another sovereign's courts," as ruled by the U.S.

Supreme Court in Nevada v. Hall, supra, at 440 U.S. 416. Redden also knew that no notice required by Colorado state law was required prior to bringing action based upon 42 USC s.1983, the plaintiff's 3rd claim for relief. Redden knew that statutes of limitations for the 3rd claim for relief based upon 42 USC s.1983 clearly did not begin to run until the date of the last act committed pursuant to the conspiracy, and that the statute of limitations for that claim is 6 years in both Colorado and Oregon. Pursuant to conspiracy **Redden deceitfully did not make the essential findings as to what statute of limitation applied, when it began to run, and when the lawsuit of EXHIBIT A was commenced**, and Redden knew that all of those findings are essential to claim bar by expiration of statutes of limitation.

(18) Pursuant to conspiracy, Coconspirator Judge Redden allowed

withdrawal of appearances and then dismissed as to 8 Colorado judges who were not served summonses and complaints. This allowance of withdrawal of general appearances pursuant to conspiracy was without legal justification. Those judges by and through their attorney Carter, defendant herein, entered general appearances in the state court on July 9, 1986. Pursuant to conspiracy, on July 21, 1986, they fraudulently entered general appearances in the federal court knowing it lacked jurisdiction. Pursuant to conspiracy, Redden fraudulently stated in EXHIBIT L on page 7, lines 13-17, "They then learned that the case had been removed to federal court and moved for an extension of time within which to respond to the amended complaint which had just been filed. They indicate that they were uncertain at that time which defendants had actually been served with the amended

complaint." First, this being the only recognition of the existence of the amended complaint in the opinion, it clearly reveals that Redden knew that Carter knew that it was the amended complaint to which he must respond, a fact only if the bogus petition was filed in the state court after the amended complaint had been filed. It was in that appearance by motion that Carter and the judges he represented stated, "Also these defendants are uncertain as to the **status of an amended complaint** ..." (The motion was granted by Redden July 24, 1986.) In a supporting affidavit, Carter stated he learned that the plaintiff had filed an amended complaint before he learned that "this matter had been removed..." Redden knew that his statement as to lack of knowledge as to which ones had been served the amended complaint is irrelevant. Pursuant to conspiracy, Redden

fraudulently stated, EXHIBIT L, page 7, lines 22-23, "Plaintiff was served with the motion to withdraw on August 4, 1986, and still has not served these defendants." Redden and the defendant Colorado judges seeking withdrawal of appearances, and all defendants herein, knew that the plaintiff had a right to rely upon the general appearances in the state court as waiving requirement of service of summonses and complaints, an expensive, time consuming process. Pursuant to conspiracy, the motion to remand by the plaintiff was not denied until October 17, 1986. Any service of summonses and complaints could have caused jurisdiction in the federal court which was not the court the plaintiff rightfully chose as the proper forum. Coconspirator Redden and all defendants herein knew that the unlawful motion and threat to award attorney fees was submitted by Hartford

and its attorneys on October 8, 1986. As noted above, as a proximate result of that illegal threat and coconspirator Redden's maintaining and encouraging it pursuant to conspiracy, the plaintiff did not act any further in the federal court.

(19) Pursuant to conspiracy, on page 8 of his opinion, EXHIBIT L, Judge Redden acting on motion to dismiss the null and void "complaint," of which he had only an alleged non-certified copy, fraudulently dismissed as to served Colorado State judges. Pursuant to conspiracy, he dismissed under pretext of lack of personal jurisdiction, no notice under Colorado Governmental Immunity statutes, judicial immunity, and "applicable" statutes of limitation. Pursuant to conspiracy, and representative of the low calibre of deceit, Redden outrageously, falsely, and deceitfully stated on lines 18-20, page 8 of EXHIBIT L, "Dr. Tyler

alleges that he has been damaged as a result of a conspiracy beginning in 1974 and the claim was commenced in 1986." At all times pertinent Redden knew that the conspiracy did not begin in 1974 and that at no time did the plaintiff ever allege when any conspiracy began, and when it began was deceitfully injected and is irrelevant to the statutes of limitation and at all times coconspirator Judge Redden knew that. At all times Redden knew that the date of the last act, not the first act, is the date statutes of limitation concerning conspiracy begin to run. Pursuant to conspiracy Redden deceitfully used the date "1974" and the vague date "1986." Pursuant to conspiracy Redden deceitfully did not make the essential findings as to **what statute of limitation applied, when the statute began to run, and the date certain that the lawsuit of EXHIBIT A was commenced.** At

all times pertinent he knew that he did not even have legal evidence that it was commenced in 1986 as he determined.

(20) Pursuant to conspiracy Judge Redden on page 9 of EXHIBIT L dismissed as to **Judges Finesilver, Seth, McKay, and Logan. The fraudulent dismissal** is the result of a legally inadequate motion with the only identification being "Defendants, four federal judges," filed in the federal court pursuant to conspiracy by coconspirators Turner and Kobbervig on August 11, 1986. Pursuant to conspiracy the motion didn't mention the complaint or the amended complaint. Pursuant to conspiracy the **accompanying memorandum was directed deceitfully to the null and void "complaint."** Their motion was supported only by deceitful argument and **not by any affidavits. No legal evidence was submitted to counter the allegations of actions pursuant to conspiracy.** Pursuant

to conspiracy, this fraudulent and illegal dismissal as well as those of Colorado state judges by Redden, coconspirator of defendants herein, was knowingly done in direct conflict with holdings by the Ninth Circuit Court of Appeals, which supervises the U.S. District Court of the District of Oregon. At all times pertinent herein, Redden knew that it held in Rankin v. Howard, 633 F.2d 844, 847-848 (9th Cir 1980) "Although a party conniving with a judge to predetermine the outcome of a judicial proceeding may deal with him in his 'judicial capacity,' the other party's expectations, i.e., judicial impartiality, is actively frustrated by the scheme. In any event, the agreement is not 'a function normally performed by a judge.' It is the antithesis of the 'principled and fearless decision-making' that judicial immunity exists to protect. ... We conclude that a judge°s private,

prior agreement to decide in favor of one party is not a judicial act. ... If the alleged agreement manifests Judge Zeller's participation in a conspiracy, then proof of the agreement could form the basis of liability ..." The foregoing was that court's interpretation of Stump v. Sparkman, 435 U.S. 349 (1978), which Redden fraudulently cited as pretext for his illegal dismissals.

(21) Dismissals of defendants not served, EXHIBIT L, page 9, lines 21-22, was done unlawfully pursuant to conspiracy. This was done pursuant to conspiracy intentionally to illegally deny the plaintiff any right to public trial of any part of the lawsuit of EXHIBIT A which would be the expected result if Redden remanded the case to the state court. Not being served summonses and complaints, Redden had no personal jurisdiction of those defendants as enunciated in Rankin

v. Howard, 633 F.2d 844 (9th Cir, 1980), and at all times pertinent Redden knew that. At all times pertinent Redden knew that with lack of personal jurisdiction he had no jurisdiction at all of those parties and that he had no authority whatsoever to dismiss them and it was particularly oppressive to dismiss as to them "on the merits."

54.

Coconspirator Judge Redden's opinion, EXHIBIT L, in all its important parts and in its entirety are connected to aforementioned fraudulent acts of defendants herein and each of them pursuant to conspiracy and is the result of fraud and collusion. By his act of issuing the aforementioned opinion and illegal orders of dismissals and illegal entry of judgment pursuant to conspiracy, Redden, knowing he was acting without jurisdiction, intentionally obstructed,

impaired and hindered the administration of law and judicial function by means of economic interference or obstacle in violation of ORS 162.235, and as a proximate result of those illegal and criminal acts committed pursuant to conspiracy the plaintiff was injured and damaged as herein alleged.

55.

Pursuant to conspiracy, on March 3, 1987, Redden set a hearing for March 26, 1987, "on Hartford's motion for atty fees and costs." Pursuant to conspiracy, Redden ordered judgment of dismissal entered against the plaintiff March 9, 1987. Pursuant to conspiracy the motion to award defendants attorney fees and costs remained as a continuing outrageous threat against the plaintiff as an extortion to prevent appeal and action by the plaintiff in the state court in the case of EXHIBIT A.

All defendants and named coconspirators knew at all times pertinent that the jurisdiction was still in the state court and pursuant to conspiracy they outrageously sought illegal termination of the case through coconspirator Elden, who as Assistant Attorney General for the State of Oregon could act criminally and expect no civil or criminal accountability, and through his providing pretext for illegal dismissal by coconspirator Judge Yraguen, who as a judge is not in reality subject to civil or criminal law. On March 16, 1986, pursuant to the total conspiracy subject of this complaint, coconspirator Elden wrote a letter to coconspirator Judge Yraguen received by him, copy appended hereto as **EXHIBIT P.** The letter falsely and fraudulently stated that the case had been removed to the federal court and

dismissed and that there was "nothing left to accomplish in Malheur County." Without any legal evidence before him, without a motion or other legal reason to act, without notice or hearing, without due process of law, and inconsistent with claim that the case was removed to the federal court, Judge Yraguen acted pursuant to the conspiracy as a coconspirator and illegally dismissed the case of EXHIBIT A, copy of order appended hereto as **EXHIBIT Q.**

57.

Pursuant to conspiracy, on March 26, 1987, Judge Redden granted the motion of Hartford Insurance Group to order the plaintiff to pay its attorney fees and costs. The written opinion by Judge Redden, copy appended as **EXHIBIT R**, is replete with false fraudulent statements. Knowingly acting without jurisdiction of the lawsuit and without jurisdiction of

the plaintiff, Redden started with false characterizations of defendants and fraudulent omissions of characterizing other defendants. He again avoided stating a date that the case of EXHIBIT A was commenced, and falsely fraudulently stated that it was removed to the federal court on July 3, 1986. He fraudulently covered that the hearing February 6, 1987, was ex parte and unethical by noting that provision was made for the plaintiff to appear by telephone. Further, the judge concluded that the plaintiff's lack of appearance made no difference (page 3, lines 17-19, EXHIBIT R,) which it must be presumed was correct inasmuch as the results of motions had been determined beforehand illegally through conspiracy. In his quote of Rule 11, FRCP, on page 4, EXHIBIT R, Redden fraudulently omitted the key sentence of the elements for which sanctions are permitted. That sentence

is, "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." (emphasis added). Accordingly, pursuant to conspiracy, Redden, made no findings of violation of those essential elements of Rule 11 by the plaintiff. The rule is highly punitive, is in conflict with the common law which provides trial by jury for alleged abuse of process or malicious prosecution, and all defendants herein and coconspirators knew at all times pertinent

that Rule 11 requires strict interpretation. Sanctions are connected to the signing of pleadings. At all times pertinent herein, Redden and all defendants and all named coconspirators herein knew that the bogus document claimed to be a copy of a complaint filed in the federal court by Turner and Kobbervig before the federal court was not signed by the plaintiff. The signed complaint and amended complaint were filed in the state court. On page 5, lines 7-8, EXHIBIT R, Redden knowing it was false, falsely and fraudulently stated that the "plaintiff has brought virtually identical suits containing the same allegations and regarding the same series of events numerous times in Colorado." Any and all references to other lawsuits by Redden are without legal evidence. Redden had no certified records of other court proceedings before him. Redden's

statement was deceitful in that claims and defendants were different which is obvious to anyone reading the complaint or amended complaint. In presenting the conspiratorial remarks of Finesilver, Redden fraudulently omitted the facts that Finesilver found that the referred to complaint stated a cause of action and that Finesilver illegally dismissed the case because the plaintiff refused to post the $48,000.00 bond that Finesilver illegally ordered pursuant to conspiracy. Redden fraudulently omitted the fact that Finesilver was a named defendant in the case of EXHIBIT A for that illegal dismissal and denial of plaintiff°s Constitutionally guaranteed right to trial. At all times pertinent all defendants and coconspirators named including Redden knew that if there is claim of prior conclusive litigation that the proper procedure is to answer the

complaint and plead the defense of res judicata or collateral estoppel, and that it is inappropriate to decide such issues by way of Rule 11. Redden and all defendants and named coconspirators knew at all times pertinent that determination of collateral estoppel or res judicata requires the complete record in evidence of proceedings of the case upon which the claim is based. None of the records of other cases were in evidence before Redden. In truth, Redden and other conspirators including Hartford knew that collateral estoppel and res judicata require identical parties, facts, issues, and proofs in each case and proof that the issues were actually litigated. They knew that those defenses were not applicable to EXHIBIT A. They also knew that the plaintiff could rightfully attack any judgment which was the result of fraud and collusion. Redden, knowing it was false,

falsely and fraudulently stated on page 6, lines 1-2, EXHIBIT R, "(the plaintiff) has once again brought suit against this defendant in a manner that does not comply with Fed. R. Civ. P. 8 (a)." That rule concerns "General Rules of Pleading" in the U.S. District Courts. First, in truth, Hartford Insurance Group was not a defendant in any case brought by the plaintiff in a federal court subject to Federal Rules of Civil Procedure. Second, and more significant, the complaint and amended complaint of the case of EXHIBIT A were filed in the state court and not subject to federal rules of civil procedure. Pursuant to conspiracy, Redden knowing it was false, falsely and fraudulently stated "The complaint in the instant action is also virtually unintelligible and contains claims and allegations virtually identical to those that were dismissed and stricken in the

previous actions." Redden falsely and fraudulently refers to the non-certified copy of the null and void complaint filed by Turner and Kobbervig, lawfully replaced by an amended complaint by the plaintiff. In truth, no defendant answered that they could not understand the allegations. To the contrary, all served defendants submitted motions that revealed that they understood the allegations. Defendants and coconspirators including Redden at all times pertinent knew that all that is required as to intelligibility is that allegations can be admitted, denied, or answered that due to lack of information they are denied as pronounced in Ehrman v. U.S., 4 FRD 29 (NY, 1941). To meet the requirement of subjective intelligibility to conspirator judges is apparently an impossibility. Pursuant to conspiracy, Redden has punished the plaintiff for not writing a complaint in a manner which

meets his approval, and without finding any culpable intent. In truth, this is another of the examples of fraudulent illegal misuse of rules of procedure, not subject to public scrutiny, to illegally deny the plaintiff right to trial and another example of use of courts to steal his property and money. Redden's fraudulent claim that the action of EXHIBIT A contains the same allegations as in prior lawsuits is false and Redden at all times pertinent knew it was false. Redden fraudulently omitted the fact that the plaintiff was illegally denied right to trial or right to appeal lawsuits to which he apparently referred. Knowing it was false and fraudulent, Redden stated on page 6, lines 7-10, EXHIBIT R, "The allegations contained in this complaint are, as were they in the prior lawsuits, barred by applicable statutes of limitations as I noted in my Order of

February 6, 1987." Redden and all other defendants including Hartford knew that a plaintiff is not required in his commencing a lawsuit to anticipate defenses a defendant might claim such as statutes of limitation. In truth, Finesilver and his coconspirators were being sued in EXHIBIT-A for not following established Colorado law concerning statutes of limitation, and for dismissal of the referred to case pursuant to fraud and conspiracy. Redden's false and fraudulent findings of bar by Oregon statutes of limitation are addressed above. Inasmuch as claims by virtue of 42 U.S.C. s.1983 are subject to 6 year statutes of limitation which by federal law and precedence commence only after the last act of a conspiracy, Redden, knowing it was false, falsely and fraudulently stated, "Plaintiff has again made a claim pursuant to 42 U.S.C. s.1983 without

alleging facts indicating that the defendant acted under color of law." Redden fraudulently avoids the fact that defendant Hartford was clearly alleged to be a conspirator with state judges and with Finesilver who acted under color of state statutes. In addition to other false statements, Redden stated on page 6, lines 15-16, EXHIBIT R, "Moreover, plaintiff continues to include disparaging remarks about the defendants and their counsel." In truth, all disparaging remarks made were justified and necessary for stating the claims upon which lawsuits by the plaintiff have been commenced. No one has denied the truth of disparaging statements made by the plaintiff or stated which disparaging statements to which they took offense. After finding without legal evidence that the plaintiff is an attorney, Judge Redden insultingly, falsely, fraudulently, and ambiguously

stated, "I find that plaintiff's pursuit of this lawsuit was and is legally unreasonable and that this lawsuit is without factual foundation." The plaintiff has good reason to believe that in an honest public trial with fact finding by a jury as guaranteed in amendments to the U.S. Constitution that he will prevail. Repeated denial of right to trial, frauds, and alterations and destructions of evidence, including illegal, criminal alterations of transcripts of hearings and the docket of filings in the U.S. District Court for the District of Oregon for which Judge Redden is responsible, are admissions that the plaintiff would have won the lawsuit of EXHIBIT A in public trial by jury. Pursuant to conspiracy, Redden knowing it was false, falsely and fraudulently concluded, "The fact that these filings force the defendant to once again appear

and defend itself against meritless claims which are inarticulately framed supports the motion for sanctions." (emphasis added). Redden fraudulently does not identify the "filings" to which he refers or where they were filed by the plaintiff. The bill submitted for attorney fees fraudulently includes time prior to any filing of any documents in the federal court by the plaintiff, and the sanctions appear directed to the void complaint filed by the plaintiff only in the state court. Furthermore, in truth, Redden knew that a legitimate subject matter of the lawsuit of EXHIBIT A was Hartford°s corruption of the state and federal courts of Colorado.

58.

Copy of the illegal order to the plaintiff to pay Hartford's attorney fees and costs, an order obtained and issued through fraud and collusion, is appended hereto as

EXHIBIT S. Copies of the Judgment in the amount of $4,976.41 and the filing of it in Malheur County pursuant to conspiracy are appended as EXHIBIT T.

59.

The aforementioned conduct and each and all of the acts and accumulated and together, of each and all defendants, and by coconspirators for which defendants and each of them are responsible, committed jointly and separately, and committed and being committed pursuant to a continuing conspiracy, were and are outrageous in the extreme and they were committed intentionally for the purpose of causing the plaintiff to suffer severe emotional distress and to thereby obstruct justice in the lawsuit of EXHIBIT A in which the plaintiff had an interest.

60.

The aforementioned conduct and accumulated acts and each of them committed by the

defendants and each of them and pursuant to conspiracy,and by coconspirators of the defendants and each of them for which defendants and each of them are responsible and liable, proximately caused and continue to cause the plaintiff to suffer severe emotional distress, mental suffering, and other damage as alleged herein.

61.

The defendants and each of them conspired to commit crimes and committed crimes aforementioned pursuant to conspiracy proscribed by the following provisions of Oregon Revised Statutes: ORS 162.065, 162.085, 162.235, and 166.720, and their coconspirators pursuant to the conspiracy subject of this complaint violated ORS 162.295, 162.305, and 162.415, for which the defendants are responsible and liable.

The defendants in and by their aforementioned acts and pursuant to conspiracy engaged in a pattern of racketeering activity defined by ORS. 166.715. The defendants and each of them and pursuant to conspiracy engaged in more than two incidents of racketeering conduct that had the same or similar intents, results, accomplices, victims and methods of commission and are interrelated and not isolated incidents. The many violations of criminal statutes aforementioned were each and all of them acts of racketeering conduct by defendants and each of them acting pursuant to conspiracy which were intended to and resulted in criminal obstructing, hindering, and impairing administration of law and judicial function that were intended to harm one victim, the plaintiff, who was proximately injured and damaged from such racketeering

activity.

63.

Defendants and each of them knowingly received money in the form of salaries and fees for service for and derived from the foregoing racketeering activity.

64.

The foregoing racketeering activity of the defendants and in violation of ORS 16.720 (1) and of part (4) by conspiring to violate ORS 166.720(1) proximately caused the plaintiff damages as herein alleged, and plaintiff is entitled to three-fold the actual damages, punitive damages, attorney fees in trial and appellate courts and costs of investigation and litigation.

65.

The aforementioned fraudulent acts that occurred in the federal court or were connected thereto are extrinsic fraud to the action of the case of EXHIBIT A

because on the face of the record the federal court had no jurisdiction of the case and the jurisdiction of the case was at all times pertinent in the state court. Conspiracy between defendants herein and Judge Redden and fraudulent use of legal proceedings in the U.S. District Court for the District of Oregon is extrinsic fraud. Furthermore, the threat of illegal order by a coconspirator judge to the plaintiff to pay defendants' attorney fees was extrinsic fraud that illegally prevented the plaintiff from responding in the federal court to the aforementioned fraudulent acts committed by the defendants herein. The plaintiff was deprived his right to appeal in state and federal courts because of the illegal, fraudulent, oppressive threat to award defendants attorney fees. Aforementioned acts of defendants, being extrinsic fraud, are properly subject of this lawsuit.

Issues of this case could not and cannot be determined by appeal and can only be determined by a public trial by jury.

66.

Each and all of the aforementioned fraudulent acts of each and all defendants and named coconspirators have proximately caused the plaintiff loss of time and money **not subject to remedy by appeal** of the case of EXHIBIT A, **even if appeal had been available and which was not available**, including but not limited to his time and work as his own attorney, time and cost to travel several times to and from Vale, Oregon, from Ontario, Oregon, a one-way distance of 16 miles to obtain copies of documents filed in the Circuit Court of the State of Oregon for the County of Malheur and for use of its limited law library, time and cost to travel several times to and from Boise, Idaho, from Ontario, Oregon, a one-way

distance of 55 miles, to a law library for research, loss of time expended on legal research and writing, costs of copies of statutes, case reports, and other documents, and loss of time and money expended for trips to and from Portland, Oregon, a one-way distance of 375 miles from Ontario, Oregon, which required two nights' lodging and three days' food for each trip, as well as automobile expenses. The damage proximately caused by defendants includes but is not limited to denial of the plaintiff the benefit of ORS 12.020 (2) which provides that defendants served within 60 days of filing of the complaint will be considered to have had action commenced against them as of the date of the filing of the complaint. As a proximate result of the aforementioned acts by defendants and each of them, statutes of limitation have expired for plaintiff's right to initiate a separate

independent action against Hartford for breach of its insurance contract with the plaintiff. The foregoing acts by the defendants have proximately caused the plaintiff loss of time, earnings, liberty, enjoyment of the use of moneys in compensation for claims of EXHIBIT A, and enjoyment in living. The extremely outrageous acts of defendants herein have proximately caused the plaintiff severe emotional distress and mental suffering. None of those damages could have been or could be compensated for by appeal of the case of EXHIBIT A even if appeal was available and which was not and is not available.

67.

As a proximate result of the foregoing acts committed by the defendants and each of them and by their coconspirators pursuant to conspiracy, the plaintiff was illegally and wrongfully denied his right

to trial of the case subject of EXHIBIT A and was injured and damaged as herein alleged.

68.

As a proximate result of the foregoing acts committed pursuant to conspiracy, the defendants herein are liable for all acts and damages proximately caused by acts cited in EXHIBIT A.

69.

The foregoing acts and each of them committed pursuant to conspiracy by defendants and each of them and by their coconspirators for which defendants and each of them are responsible and liable proximately caused the plaintiff loss of time and money in an amount exceeding $600,000,000.00 and other special damages.

70.

The foregoing acts and each of them committed by defendants and each of them and by their coconspirators for which

defendants and each of them are responsible and liable proximately caused the plaintiff severe emotional distress and mental suffering in the amount of $20,000,000.00.

71.

The aforementioned acts and each of them committed by the defendants and each of them were committed maliciously, intentionally, willfully and wantonly, and in reckless disregard of the rights and feelings of the plaintiff, and the plaintiff is entitled to exemplary and punitive damages.

WHEREFORE, plaintiff prays for remedy and relief from the defendants and judgment jointly and severally as follows:

1. Special damages in the amount of $600,000,000.00,

2. General damages in amount of $20,000,000.00,

3. Treble the aforementioned $620,000,000.00 actual damages,

4. Costs of suit,

5. Attorneys' fees,

6. Interest,

7. **AND EXEMPLARY DAMAGES** from each of the defendants as follows:

8. One billion dollars ($1,000,000,000.00) from Hartford Insurance Group,

9. $5,000,000.00 from Yturri, Rose, Burnham, Ebert and Bentz,

10. $5,000,000.00 from Anthony Yturri,

11. $5,000,000.00 from Carl Burnham, Jr.,

12. $5,000,000.00 from Teresa J. Hutchens,

13. $5,000,000.00 from Cliff S. Bentz

14. $5,000,000.00 each from each of the insurance company defendants other than Hartford.

15. $2,000,000.00 each from each of the other defendants.

16. And other appropriate relief.

PLAINTIFF DEMANDS A JURY TRIAL OF ALL ISSUES HEREIN

By (signed)

Donald E. Tyler, M.D.,
PLAINTIFF, pro se
1092 S.W. 2nd Ave.
Ontario, OR 97914
telephone (503)-889-5109

AFFIDAVIT

I, Donald E. Tyler, M.D., the plaintiff in this action, being duly sworn do hereby declare under oath that to my knowledge and belief all allegations in the foregoing complaint are true.

By (signed)

Donald E. Tyler, M.D. AFFIANT

STATE OF OREGON)
County of Malheur) ss.

The foregoing was sworn to and subscribed

to before me by DonaldE. Tyler, M.D., in Ontario, Malheur County, Oregon, this 28 day of April, 1987. (signed) NOTARY PUBLIC

My commission expires: (dated) (seal)

EXHIBITS OF COMPLAINT

EXHIBIT A,

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR MALHEUR COUNTY, DONALD E. TYLER, M.D. v. HARTFORD INSURANCE GROUP, SHERMAN G. FINESILVER, OLIVER SETH, MONROE G. MCKAY, JAMES K. LOGAN, WILLIAM ERICKSEN, DONALD P.SMITH, JR., A.M. KELLY, E.P. VAN CISE, JUDGE TURSI, EDWIN G. RULAND, ALAN L. STERNBERG, HARRY S. SILVERSTEIN, JR., MAC V. DANFORD, PHILIP F. ROAN, HARLAN R. BOCKMAN, DEAN JOHNSON, JEAN J. JACOBUCCI, MARVIN W.FOOTE, ANTHONY F. VOLLACK, STEPHEN D. DAWSON, DEBBIE FREEPONS CRAIG, PETER PRYOR, THOMAS L. ROBERTS, JOHN MOTT, PAUL D. RENNER, JOHN R. RODMAN, FRANK R. KENNEDY, PAUL

D.COOPER, DONALD E. LA MORA, SHERMAN AND HOWARD LAW FIRM, MICHAEL A. WILLIAMS, KENNETH B. SIEGEL, ELLEN W.REATH, ROGER F.JOHNSON, ROBERT RUDDY, CARL R. KOSTOL, M.D., ALLAN L. FERRIN, M.D., DAVID E. REID, D.O., AND HOWARD I. BOBBITT, Defendants. No. 86-06-20969-L AMENDED COMPLAINT (Tort- damage to business and personal injury) Filed 8:33 A.M. Jul 7, 1986.

Plaintiff submits this AMENDED COMPLAINT prior to responsive pleading.

1.

The plaintiff complains of defendants jointly and severally, and for cause of action alleges:

I. FIRST CLAIM FOR RELIEF: COMMON LAW REMEDY FOR UNLAWFUL AND WRONGFUL INTENTIONAL INTERFERENCE WITH BUSINESS AND PURSUANT TO CONSPIRACY

2.

Acts subject of this complaint occurred in

Ontario, Malheur County, Oregon, and in Colorado.

3.

Conspirators include persons acting under color of office of judges of district, appellate, and supreme courts of the State of Colorado, and persons acting under color of police officers of Brighton, Colorado. They and judges of federal district and appellate courts in Colorado acted under fraudulent color of various Colorado State Statutes.

4.

The defendants herein and each of them are responsible for all of the wrongful acts alleged herein and by reference regardless of who committed them or where they were committed.

5.

Prior to plaintiff's applying for medical staff membership in Brighton Community hospital (BCH) in 1968, the hospital

administrator of that hospital illegally invaded the privacy of the plaintiff pursuant to the conspiracy subject of this complaint by special inquiries to various places concerning the single marital status of the plaintiff.

6.

Pursuant to conspiracy subject of this complaint, physicians, nurses, and hospital employees at BCH outrageously tried unsuccessfully to trap the plaintiff and even resorted to jeopardizing lives of patients appearing at the emergency room in order to evoke a display that could be deceitfully used against the plaintiff.

7.

Pursuant to conspiracy subject of this complaint, disciplinary hearings concerning the plaintiff were scheduled in Brighton Community Hospital in 1974 without charges or any justifiable reason, but for the malicious reason of unlawfully

damaging the plaintiff irreparably in his practice of medicine and outrageously to intentionally cause him emotional distress.

8.

Exercising his only means of preserving his Constitutionally guaranteed right to notice of specific charges, which were denied him, the plaintiff did not attend aforementioned hearing, the outcome of which was pre-decided, and in breach of hospital bylaws the plaintiff was outrageously and maliciously removed from emergency room call duty without reason or charges only for the purpose of unlawfully damaging him in his practice of medicine and for insult and to cause him emotional distress when it was expected that he would be removed from it naturally in only 2 months after such service for 6 years, and plaintiff was then by deceitful, outrageously illegal means and purposes

denied reappointment to the hospital medical staff pursuant to the conspiracy subject of this complaint.

9.

Pursuant to and knowingly joining the conspiracy in progress, members of the Brighton Municipal Police Department maliciously harassed the plaintiff in his apartment.

10.

Pursuant to conspiracy herein, the District Attorney for Adams County in Brighton, Colorado, refused to prosecute conspirator Dr. Marks for libel when presented documentary proof of a prima facie case, and conspirators outrageously threatened plaintiff by informing plaintiff that the district attorney assured them that he would prosecute no one in connection with the entire conspiracy.

11.

Because of the aforementioned and other wrongful illegal acts committed against the plaintiff pursuant to the conspiracy subject of this complaint, plaintiff initiated several lawsuits in Colorado designed to enable him to practice medicine and without unlawful interference and to receive compensation for damages. Copies of complaints of pertinent suits are appended to the complaint as EXHIBITS A, B, C, D, and E (without some exhibits of the complaints consisting of many pages) and those EXHIBITS are incorporated herein pursuant to UTCR 2.010,(9); and acts and claims therein alleged are incorporated herein by this reference and damages proximately resulting therefrom are herein sought. They will be referred to herein as cases A,B,C,D, and E, respectively.

12.

Pursuant to conspiracy herein alleged, the plaintiff was falsely maliciously libeled in his profession by the Brighton Blade, the local newspaper, during trial of lawsuit "A" referred to and incorporated herein below, illegally denying plaintiff a fair trial.

13.

Fair trial of case A (consolidating two cases) was further illegally denied the plaintiff by defendant conspirators°

(a) unlawful intimidation of witnesses employed by the defendant hospital,

(b) wrongful suppression of legal evidence,

(c) ex parte deals and collusion between the trial judge, Dean Johnson, and named conspirator Larsen, and

(d) unethical closing argument by conspirator attorney.

14.

Plaintiff was illegally denied fair appeal of case A by outrageous fraudulent misquote of the letter subject of the libel action, and other frauds committed by judges of the Colorado Court of Appeals, defendants herein, in collusion and pursuant to conspiracy and who knew the falseness of their statements and knew that their misapplications of law were false.

15.

Further appeals of case A were deprived the plaintiff by the unlawful, malicious, intentional taking and destruction of trial exhibits during the appeal process by defendant judges of the Colorado Court of Appeals, such destruction also being ratified as their own. That illegal, unlawful destruction of the personal property of the plaintiff by defendants acting under color of state statutes and

offices pursuant to conspiracy subject of this complaint was not a judicial act.

16.

Judge Dean Johnson was assigned to preside over Case B by Judge Jean Jacobucci acting illegally and unethically with defendants Dawson, Renner, and Mott pursuant to conspiracy subject of this complaint.

17.

Pursuant to conspiracy, Judge Dean Johnsonissued insulting,damaging, outrageous, oppressive orders (that the Colorado Supreme Court ordered expunged from the record) and Defendant Johnson fraudulently dismissed Case B by summary judgment knowing it was an illegal act. These malicious, illegal acts proximately caused the plaintiff loss of time and money and other damage as herein alleged.

18.

Vital depositions of conspirator hospital administrator Vowell, conspirator Dr.

Marks, and of two other persons, one of which contained proof of illegal telephonic surveillance of the plaintiff by defendants herein in unlawful invasion of privacy of the plaintiff, were unlawfully stolen pursuant to the conspiracy subject of this complaint while in custody of the trial court.

19.

Pursuant to the conspiracy subject of thiscomplaint,

(a) reconstructed aforementioned 4 depositions and 46 other depositions, consisting of over 3000 pages of testimony, valuable property of the plaintiff, were selectively maliciously, illegally destroyed (while preserving depositions taken by defendants) in the Colorado Court of Appeals, (a taking of property without due process of law, under color of laws of the state of Colorado,

pursuant to conspiracy), by defendants herein during the appeal process initiated by plaintiff herein to reverse the unlawful fraudulent dismissal by summary judgment of Case B. Defendant judges of the Colorado Court of Appeals ratified as their own acts the taking and destruction of aforementioned property of plaintiff.

(b) That unlawful taking and destruction of the valuable property of the plaintiff by defendant judges was not a judicial act.

(c) Defendant judges, clerk Mac Danford, and other conspirators outrageously refused to provide plaintiff with his requested details of the destruction by conspirator defendants herein fraudulently falsely claimed to be due to negligence of third parties, whom they refused to identify, because of nonexistence, or whose acts they ratified as their own, along with other requested details to

cover up their criminal and tortious acts and in obstruction of justice.

20.

Pursuant to conspiracy subject of the instant lawsuit herein, communications to the plaintiff in Ontario, Oregon, by defendant Danford and defendant judges of the appeals court concerning destroyed exhibits and depositions were outrageous, oppressive, and even included criminal extortion.

21.

Pursuant to conspiracy herein alleged, defendants Craig, Danford, and judges of the appeals court acted outrageously and illegally to prevent proper legal reconstruction of destroyed depositions so as to make them legally useless in trial and to thereby encourage, promote, aid and abet perjury and non-appearances of witnesses at trial. Insulting, blatant, outrageous, unlawful acts by defendant

Craig, now a resident of Oregon, in such deceitful reconstruction were done in Colorado and in Ontario, Oregon, pursuant to conspiracy.

22.

The aforementioned malicious, illegal destruction of depositions pursuant to the continuing conspiracy subject of this action proximately caused the plaintiff loss of time and money, and other damage herein alleged.

23.

Pursuant to conspiracy, defendant judges in the appeals court fraudulently affirmed dismissal by summary judgment in Case B as to nurse conspirators and conspirators who were prominent citizen members of the board of directors of BCH knowing that such dismissal was illegal.

24.

Pursuant to conspiracy, Plaintiff was illegally denied fair trial of Case B by

(a) subornation of perjury by defendants Mott and Dawson (a member of the Oregon Bar), approved and condoned and ratified by conspirator Judge Marvin Foote, and
(b) immoral, illegal appeals to the jury to act against the plaintiff because of his minority religious affiliation by defendant Mott, an agent of defendant Hartford, and
(c) appeals to the jury by defendants herein because the plaintiff was not married,
(d) suppression of proper legal evidence,

and other fraudulent and unlawful acts by defendants herein.

25.

Jury verdict awarding the plaintiff $730,000.00 including punitive damages requiring proof beyond reasonable doubt and interrogatories finding conspiracy in Case B announced in open court with poli

of jury are appended hereto as EXHIBITS L and M of Exhibit D (Case D).

26.

Pursuant to conspiracy, plaintiff was illegally deprived the benefit of trial by jury and aforementioned verdict by

(a) jury tampering,

(b) fraudulent order of mistrial by conspirator trial judge Marvin Foote based upon an unauthenticated verdict form finding in favor of defendants accepted outside of court, a non-judicial act,

(c) orders concerning new trial motions by prejudiced, legally disqualified Judges Jacobucci and DeLaney acting without jurisdiction in collusion and unlawful conspiracy with defendants herein, outrageously and illegally condoned by members of the Colorado Supreme Court by fraud and by unlawful application of evidence outside the record, not presented in open court, and not subject to

examination by the plaintiff,

(d) and orders for new trial by defendant Foote after jurisdiction was exhausted in the trial court.

(e) Judges Delaney, Jacobucci, and Foote knew that they acted without jurisdiction and defendants acting with them, including agents of Defendant Hartford, knew that they acted without jurisdiction, and such acts were pursuant to conspiracy.

27.

Pursuant to conspiracy, plaintiff was illegally deprived appeal of trial of case B by

(a) purposeful, intentional concealment of reporter's notes taken of trial proceedings, outrageous report to plaintiff that aforementioned notes disappeared without explanation for such disappearance, reported move of that reporter out of state, refusal of conspirator trial court administrator to

supply plaintiff with reporter°s address, and

(b) illegal changes made pursuant to conspiracy in the remaining partial transcript of proceedings.

28.

Pursuant to conspiracy, trial judge of Case B, Defendant Foote, without withdrawal from the case, illegally made himself unavailable by non-judicial acts for motions and new trial, condoned and approved by defendant William Ericksen, issuing orders denying plaintiff his right to continuing jurisdiction by the same trial judge, proximately causing plaintiff loss of time and money and other damage alleged herein, acting under color of office of Chief Justice of the Colorado Supreme Court without jurisdiction and pursuant to conspiracy. Justice Ericksen and other defendants acting with him in conspiracy knew he lacked jurisdiction.

29.

Pursuant to conspiracy, defendant Judge Harlan Bockman set hearings in Case B, and conducted hearings without jurisdiction, knowing he lacked jurisdiction, and acted as presiding judge in face of challenge of his jurisdiction without producing any order directing him to preside over the case in a court of record.

30.

Acting without jurisdiction, defendant Judge Bockman maliciously and oppressively threatened and continued to threaten to dismiss case B under pretext that plaintiff in Oregon disobeyed orders by not appearing for hearings set to be heard by him (Judge Bockman) in Colorado. Judge Bockman then ordered settlement conference.

31.

Settlement conference conducted by defendant Judge Philip Roan resulted in

settlement of Case B as to Marks, Larsen, Vowell, and Brighton Community Hospital.

32.

with the exception of parties referred to in paragraph 31, David Grayson, M.D., and Orrel Daniel, Attorney, who have settled with the plaintiff, the illegal, unlawful denial of compensation and other remedy for the claims of Cases A,B,C,D,E, and F are incorporated herein against the defendants herein due to the conspiracy subject of this lawsuit.

33.

At aforementioned settlement conference of Case B, defendant Judge Philip Roan stated that he had received communications ex parte from defendants herein including Hartford and its attorneys.

34.

Acting unethically because of conducting settlement conference and without jurisdiction in Case E, which involves the

same conspiracy as Case B, Judge Roan, knowing that he lacked jurisdiction, set hearings to be heard in Colorado on June 15, 1984, of all pending motions in Case E including plaintiff's motion to compel discovery and defendant's motion to dismiss Case E, pursuant to conspiracy herein complained of. Notice of hearing was served plaintiff in Ontario, Oregon.

35.

Without notice to the plaintiff until he reached Colorado from Ontario, Oregon, on June 15, 1984, Philip Roan, acting unethically after conducting aforementioned settlement conference, and without jurisdiction, and pursuant to conspiracy, outrageously, fraudulently dismissed Case E on June 13, 1984, without hearing; and no hearing had in fact been intended or had been scheduled on his docket.

36.

Illegal dismissal of Case E by Judge Roan acting maliciously and without jurisdiction and pursuant to conspiracy proximately caused the plaintiff special and general damages subject of this complaint.

37.

Needless travel of the plaintiff proximately caused maliciously, oppressively, and outrageously without jurisdiction by Judge Roan by notice of hearings issued to plaintiff in Ontario, Oregon, when hearings were not intended, pursuant to conspiracy proximately caused the plaintiff loss of time and money and other damage as herein alleged.

38.

Pursuant to conspiracy subject of this complaint, plaintiff was illegally denied his right to fair impartial appeal of dismissal of Case E by a continuing

closure of courts in Colorado by

(a) the presence of conspirators as judges of the Colorado Appeal and Supreme Courts, and

(b) by unlawful and illegal intimidation of the Plaintiff in Ontario, Oregon, by abusive, illegal, and oppressive use by defendants herein of the Grievance Committee of the Colorado Supreme Court which pursuant to conspiracy subject of this lawsuit threatened plaintiff in Oregon with disbarment and other embarrassment and loss of valuable rights without reasonable or probable cause from January 6, 1984, until July 18, 1984, and then only after all cases pending involving the plaintiff had been disposed of and plaintiff assured them in telephone conversations from the assigned committee lawyer to the plaintiff in Ontario, Oregon, that no appeal was to be made from the illegal, outrageous

dismissal of Case E because of illegal, outrageous closure of the appellate courts to him.

39.

Pursuant to the conspiracy, and acting under color of state statutes, defendants Peter Pryor, Thomas L. Roberts, and Hartford supplied the Colorado Board of Medical Examiners

(a) deceitful, false information, which they knew was misleading, concerning the plaintiff about a collusive lawsuit brought against plaintiff Tyler by persons acting in conspiracy with Hartford referred to below.

(b) They also maliciously supplied prejudicial information to the Colorado Board of Medical Examiners about lawsuits by Tyler as plaintiff against Hartford due to its conspiratorial contract with the Colorado Medical Society designed to illegally obstruct justice in all medical

malpractice cases and cases against hospital and medical society committees and which violated federal antitrust laws, subject of Case D.

40.

The members of the Colorado Board of Medical Examiners, pursuant to conspiracy subject of this complaint, unlawfully and outrageously intimidated and threatened and continue to intimidate and threaten the plaintiff in his professional practice of medicine as a result of his rightful use of courts and his exercise of First Amendment and Fifth Amendment rights.

41.

Pursuant to conspiracy subject of this complaint, defendant Hartford and other defendants

(a) induced and acted in collusion with Elmer Cook who fraudulently commenced a lawsuit against Tyler, plaintiff herein, fraudulently falsely alleging $250,000.00

damages when defendants knew Cook's damages were not that much, that Tyler had not negligently caused Cook's damage, and when they knew that Tyler's relevant insurance coverage with conspirator Hartford Fire Insurance Company, a member company of the defendant Hartford Insurance Group, was limited to $100,000.00;

(b) and then defendant Hartford, acting in collusion with attorneys it hired, outrageously in breach of contract provided only color of defense and not proper defense of Tyler, plaintiff herein. Conspirators improperly fraudulently conducted defense of the case so that plaintiff herein, defendant in that case, would lose the case which was completely without merit, which conspirators knew, and it was clearly commenced after the statute of limitations had expired.

(c) Plaintiff had fulfilled all

conditions precedent concerning his insurance contract with Hartford referred to herein.

(d) Through the aforementioned collusive lawsuit, defendants herein outrageously attempted theft of plaintiff Tyler's money and the lawsuit was outrageously designed and conducted for the unlawful purpose of harassing, embarrassing, and damaging the plaintiff emotionally and with mental suffering to distract and intimidate him and cause him to not proceed with lawsuits against conspirators insured by Hartford and lawsuits against Hartford and the Colorado Medical Society.

(e) The collusive, conspiratorial lawsuit by Cook and Hartford was outrageously designed and conducted pursuant to conspiracy subject of this complaint to damage the plaintiff in his profession, to cause him emotional distress and mental suffering, and to cause him to lose time

and money.

42.

Aforementioned breach by defendant Hartford of plaintiff's insurance contract by instituting a collusive lawsuit, by refusing to provide proper defense, and by outrageous conduct related thereto including communications to the plaintiff in Ontario, Oregon, continued until it was necessary for the plaintiff to insist upon payment for settlement with Cook, on March 6, 1981.

43.

Aforementioned collusive lawsuit caused by conspirators herein proximately caused the plaintiff damage as herein alleged including damage in his profession, loss of time and money, and other damage as herein alleged.

44.

Because Plaintiff Tyler in Case B was suing Drs. Marks and Larsen who were

insured by Hartford,

(a) Hartford maliciously conspired with members of a committee of the Colorado Medical Society, subject of Case C, to harass and threaten plaintiff herein,

(b) which they did pursuant to conspiracy, and they requested to examine the private personal records of all patients cared for by plaintiff Tyler in hospitals, without pretext of concern with quality of care, their only jurisdiction, but under pretext to determine if the records were adequate for legal purposes in the hypothetical event that the plaintiff were sued at a time when there was no reason to believe that he would be sued.

(c) Pursuant to conspiracy, the members of the medical society committee maliciously, illegally, and without hearing recommended to Hartford that plaintiff's professional liability insurance not be renewed under pretext of the reason that he did not

respond to their illegal requests.

(d) Hartford then outrageously unlawfully conditioned renewal of plaintiff°s group professional liability insurance with Hartford upon Plaintiff Tyler's unethically granting Hartford permission to unethically examine personal medical records of all patients cared for by plaintiff in hospitals, in breach of privacy of all such patients and in breach of their contracts with plaintiff.

(e) The foregoing and other associated extremely outrageous illegal acts including libel of plaintiff by Hartford pursuant to conspiracy are subject of Case C, EXHIBIT C, claims of which are incorporated herein.

45.

As a proximate result of the foregoing outrageous conduct and outrageous condition for renewal of his insurance, the plaintiff's professional liability

insurance with Hartford was not renewed inDecember, 1977, forcing the plaintiff to terminate his practice of medicine in Colorado and proximately causing him loss of time and money, and other damage as herein alleged.

46.

Case C against Hartford and other co-conspirators, was dismissed by the trial court which was affirmed by the defendant judges of the Colorado Court of Appeals by collusion, conspiracy, and outrageous fraudulent acts including by trial judge Defendant Vollack who

(a) blatantly found and ruled that two obviously different documents are identical, feigning inability to read,

(b) suppressed evidence by illegal prohibition of discovery as a result of an unethical ex parte hearing with other defendants herein,

(c) fabricated facts,

(d) and fraudulently falsely applied rules and laws; and by defendant appeals court judges who

(d) fraudulently and illegally suppressed evidence in form of depositions of defendants,

(e) used evasive, fraudulent, deceitful affidavits submitted by defendants Hartford, medical society committee members, and

through attorney defendants herein, Pryor and Roberts,

(f) condoned, approved, and ratified the outrageous acts of defendant Vollack,

(g) deliberately, fraudulently made false statements of facts including false libel of the plaintiff in his profession, and

(h) fraudulently applied a statute designed to provide immunity for good faith acts (not intentional torts and conspiracy subject of the complaint) by members of hospital committees. Pursuant

to conspiracy and fraud induced by Hartford and its agents, defendants Pryor and Roberts, the defendant appeals court judges fraudulently applied that limited immunity statute to members of a medical society committee, not covered in the act, illegally fraudulently granting them complete immunity for their intentional, illegal, outrageous tortious acts, and pursuant to conspiracy affirmed dismissal.

46.

Case D was commenced against defendant Hartford and other conspirators in the U.S. District Court for the District of Colorado.

47.

Sherman Finesilver acting as judge, after correctly finding the complaint, EXHIBIT D, stated a cause of action, pursuant to the conspiracy subject of this complaint, oppressively and fraudulently ordered the complaint stricken and provided the

plaintiff leave to rewrite the complaint requiring inconsistent, contradictory, impossible conditions for any such amended complaint.

48.

Pursuant to conspiracy, and under color of Colorado State Statutes C.R.S., 1973, 13-16-101, 102 and 13-17-101, Sherman Finesilver

(a) threatened to arbitrarily, illegally dismiss Case D and

(b) threatened to illegally award the defendants therein (and herein) attorneys fees; and

(c) he oppressively, illegally ordered the plaintiff to post a "cost" bond, with fraudulent excuse under color of state statutes of plaintiff's being a non-resident of Colorado in the exorbitant outrageous amount of $48,000.00 without any showing of cause, need, or reason for the outrageous amount with the apparent

intent and threat that it would be awarded illegally by his dictatorial fiat to pay defendants' attorney fees.

49.

Pursuant to the conspiracy subject of this complaint, the defendants proximately caused the plaintiff to be a non-resident of Colorado in 1978 and thereafter, proximately causing him to be subject to such illegal threats, abuse, and continuing illegal denial of use of federal and state courts in Colorado.

50.

Plaintiff refused to post $48,000.00 bond, so pursuant to conspiracy subject of this complaint, Judge Finesilver acting under color of state statutes unlawfully dismissed the case and with prejudice, with fraudulent reason given that plaintiff did not obey his order to post bond, illegally denying the plaintiff in Oregon his right to trial by jury and use

of federal courts in the district of Colorado or any other district in a suit involving claims based upon federal statutes with payment of only usual legal fees applicable to other plaintiffs in blatant violation of the Bill of Rights including the 5th and 7th Amendments of the U. S. Constitution.

51.

Review by appeal from aforementioned dismissal was denied by defendant Judges Oliver Seth, Monroe McKay, and James K. Logan of the 10th Circuit Court of Appeals who pursuant to conspiracy affirmed Judge Finesilver's grossly oppressive and obviously illegal orders, fraudulently, knowingly falsely

(a) claiming the dismissal (with prejudice) was due to refusal of plaintiff to comply with an order (nonexistent) to rewrite the complaint, and

(b) they acted fraudulently and illegally under color of state statutes by affirming the order of cost bond in amount of $48,000.00 without reason given for the bond or the amount.

52.

Under color of Colorado State Statutes, that violate the U.S. Constitution, the conspirators illegally closed all courts in Colorado, state and federal, to the plaintiff as to any future use including for this instant case by a continuing threat of requiring exorbitant prohibitive cost bonds threatened to be followed by fraudulent arbitrary dismissals with arbitrary illegal awards of attorney fees to defendants from the posted cost bond.
(a) Aforementioned outrageous acts were directed to the plaintiff in Oregon.
(b) Aforementioned continuing illegal closure of state and federal courts in Colorado to the plaintiff damages

plaintiff in the instant lawsuit because of differences in court procedure in Oregon and Colorado, Oregon statutes and case law are different than Colorado to the disadvantage of the plaintiff, and the plaintiff could conduct discovery and trial more effectively in Colorado if courts there were available to the plaintiff for fair and honest trials and appeals and without illegal fees and threats.

53.

(a) On May 2, 1986, the plaintiff in Ontario, Oregon, mailed by certified mail receipt of which was acknowledged by return cards,letters with the same content each to defendants Carl R. Kostol, M.D., Allan L. Ferrin, M.D., and David E. Reid, D.O. an example of which is appended hereto as EXHIBIT F and incorporated herein.

(b) Copy of letter written that same date

to defendant Howard I. Bobbitt is appended hereto as EXHIBIT G and incorporated herein. (c) Copies of letters referred to and enclosed in the aforementioned letters are appended hereto as EXHIBITS H and I and incorporated herein.

(d) Letters referred to in (a) and (b) requested information as to the reason for the continuing conspiracy subject of this complaint and specifically for the reasons those persons acted outrageously and by illegal means and for illegal purposes pursuant to that conspiracy to deprive the plaintiff unlawfully the use of his license to practice medicine in Oregon, and continuing subject to their illegal conditions, damages from which are included in this complaint.

54.

Pursuant to the conspiracy subject of this complaint and causing it to continue and

to threaten the plaintiff if he attempts to practice medicine now or in the future, defendants Kostol, Ferrin, Reid, and Bobbitt outrageously refused and continue to refuse to answer any of the questions in the aforementioned letters.

55.

As a proximate result of the foregoing conspiracy and acts committed including by fraud, the defendants and each of them illegally proximately caused plaintiff loss of lawsuits represented by complaints appended hereto and other related lawsuits and benefit of other lawsuits in the past and in the future to which he is entitled and loss of compensatory, punitive, and treble damages to which he was and is entitled.

56.

As a proximate result of the aforementioned acts committed and being committed pursuant to the continuing

conspiracy subject of this complaint, the plaintiff has suffered and continues to suffer past, present, and future loss of right to trial for damages, injunctive relief related to his right to practice medicine and surgery, and other benefits of trial, right to trial by jury, and right to benefits properly awarded or to be awarded by a jury.

57.

The foregoing acts were committed and are being committed by defendants herein with their knowing that the only possible remedy would be through lawsuits initiated by the plaintiff which would increase his damages even though such lawsuits would be justified, with merit, and against which there would be no legitimate defense. Defendants are responsible for acts and inaction of plaintiff in mitigation of damages including his trying to avoid initiation of lawsuits including the

instant case.

58.

As a proximate result of the aforementioned acts, and which were committed pursuant to the continuing conspiracy subject of this complaint to damage the plaintiff's lawful practice of medicine and surgery for illegal purposes and by illegal means, the plaintiff has been irreparably damaged and continues to be damaged in his practice of medicine and surgery and illegally and continues to be unlawfully deprived of his right to practice medicine and surgery without unlawful interference and obstruction.

59.

As a proximate result of the foregoing acts committed by defendants, and pursuant to conspiracy, the defendants and each of them have proximately caused the plaintiff loss of time and money in an amount exceeding $75,000,000,00 and other special

damage.

60.

Aforementioned acts, and committed pursuant to conspiracy, have proximately caused the plaintiff severe emotional distress and mental suffering in the amount of $15,000,000.00.

61.

Aforementioned acts of the defendants and each of them have been committed and continue to be committed maliciously, willfully and wantonly, and in reckless disregard of the rights and feelings of the plaintiff, and the plaintiff is entitled to exemplary and punitive damages.

II. SECOND CLAIM FOR RELIEF: EXTREME OUTRAGEOUS CONDUCT, AND PURSUANT TO CONSPIRACY, WHICH INTENTIONALLY INFLICTED AND CAUSED AND CONTINUES TO CAUSE THE PLAINTIFF TO SUFFER SEVERE EMOTIONAL DISTRESS

62.

Paragraphs 1 through 61 are incorporated herein by this reference.

63.

The aforementioned conduct and each and all of the acts accumulated and together, of each and all of the defendants, committed jointly and separately, and committed and being committed pursuant to a continuing conspiracy, were and are outrageous in the extreme and they were committed and continue to be committed intentionally for the purpose of causing the plaintiff to suffer severe emotional distress.

64.

The aforementioned conduct, acts, and accumulated acts, committed by the defendants and each and all of them and together proximately caused and continue to cause the plaintiff to suffer severe emotional distress, mental suffering, and

other damage as alleged herein.

III. THIRD CLAIM FOR RELIEF: CLAIMS FOR DAMAGES PROVIDED FOR BY 42 U.S.C. s. 1983

65.

Paragraphs 1 through 64 are incorporated herein by this reference.

66.

The aforementioned conspiracy and acts were designed to and did deprive plaintiff, while in the jurisdiction of Colorado, of rights, privileges and immunities secured by the Constitution of the United States of America, under color of statutes, regulations, and customs of the State of Colorado. The aforementioned conspiracy is continuing, and the aforementioned acts committed and threatened to be committed are of continuing nature, and plaintiff continues to be denied the aforementioned rights, privileges, and immunities.

WHEREFORE, plaintiff prays for remedy and relief from the defendants and judgment jointly and severally as follows:

1. Special damages in the amount of $75,000,000.00,

2. General damages in amount of $15,000,000.00,

3. Costs of suit,

4. Attorneys' fees,

5. Interest,

6. Other appropriate remedy and relief;

AND exemplary damages from each of the defendants as follows:

7. $500,000,000.00 from Hartford Insurance Group, and

8. $1,000,000.00 each from each of the other defendants.

PLAINTIFF DEMANDS A JURY TRIAL OF ALL ISSUES HEREIN By (signed) Donald E.Tyler,M.D., PLAINTIFF pro se, 1092 SW 2nd Ave., Ontario, OR 97914 telephone (503)-889-5109

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. La Mora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol,

M.D., Allan L. Ferrin, M.D., David E. Reid, D,.O., and Howard I. Bobbit, Defendants. Civil No. 86-854-RE (Malheur County Circuit Court No. 86-06-20969-L)

PETITION FOR REMOVAL

TO: The Honorable Judges of the United States District Court for the District of Oregon

COMES NOW CHARLES H. TURNER, United States Attorney, and JUDITH D. KOBBERVIG, Assistant United States Attorney, and move that the above-entitled cause, commenced in the Circuit Court for the State of Oregon for the County of Malheur County, No. 86-06-20969-L, against the defendants Sherman G. Finesilver, Chief Judge, United States District Court for the District of Colorado; Oliver Seth, Monroe G. McKay, and James K. Logan, Judges of the United States Circuit Court for the Tenth

Circuit, on June 3, 1986, be removed to this court, and in support thereof state: (1) The Petitioners are three United States Circuit Court Judges for the Tenth Circuit and a United States District Court Judge for the District of Colorado and have been duly appointed by the President; are engaged in the performance of Federal functions under authority of law and Executive acts; and are subject to the supervision of the Judicial Conference of the United States. (2) Petitioners were first notified of this suit when a copy of the complaint was delivered to defendant Chief Judge Sherman G. Finesilver on June 12, 1986. Not all federal named defendants have been served nor has the United States Attorney for the District of Oregon. As the defendants are not listed by title, it is not clear if additional federal employees have been named and therefore should be included in this

petition. Defendants have not been served in accordance with Rule 4 F.R.Civ.P. and by filing this Petition for Removal do not waive any jurisdictional defects which will be asserted in a timely manner in accordance with the Federal Rules of Civil Procedure. (3) No bond need accompany this Petition for the reason that petitioners are employees of the United States Government and at all relevant times to this suit these employees were acting within the course and scope of their employment under color of federal law. (4) Petitioners herewith file a copy of the complaint which was received in this office by telefax on July 3, 1986 from the United States Department of Justice. This complaint does not include the lengthy exhibits attached to the complaint. The Malheur County Clerk°s Office has been contacted with a request that all documents in the file be

forwarded to this office for filing. Those documents will be filed with the Court as soon as they are received in this office.

WHEREFORE, this action now pending in Circuit Court for the State of Oregon, County of Malheur is removed therefrom to this Court for all further proceedings.

Dated this 3rd day of July, 1986.

(signed) JUDITH D. KOBBERVIG

Assistant United States Attorney

EXHIBIT C (page 1, a letter)

United States Attorney, District of Oregon, 312 United States Courthouse, 620 S.W. Main, Portland, Oregon 97203, July 3, 1986 Malheur County Circuit Court, P.O. Box L, Vale, OR 97918

Re: Donald E. Tyler v. Hartford Insurance, et al., 86-06-20969-L

To the Clerk: Enclosed for filing in the above-entitled case is a Notice of Filing of Petition for Removal, Petition for

Removal attached thereto. In a telephone conversation with your office today, we were advised that there is no filing charge for this. Please advise us of the date the Notice is filed by returning the attached copy of this letter with the appropriate information for Your reply I have enclosed a sel-addressed (sic) envelope. Very truly yours, CHARLES H. TURNER United States Attorney (signed) Judith D. Kobbervig Assistant United States Attorney Encls.

FILED ON July 9, 1986

EXHIBIT C, page 2

IN THE CIRCUIT COURT FOR MALHEUR COUNTY, DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, et al.,Defendants. No. 86-06-20969-L

NOTICE OF FILING OF PETITION FOR REMOVAL

TO: Clerk of the Circuit Court of the States (sic) of Oregon for Malneur County Donald E.Tyler, M.D.,1092 S.W.2nd Avenue

Ontario, Oregon 97914 PLEASE TAKE NOTICE that on July 3, 1986, Defendant, United States of America filed in the United States District Court for the District of Oregon, a Petition for Removal of the above-entitled cause from the Circuit Court of the State of Oregon for Malheur County to the United States District Court for the District of Oregon. Copies of the pleadings are attached hereto.

DATED this 3rd day of July, 1986.

CHARLES H. TURNER United States Attorney

(signed) JUDITH D. KOBBERVIG Assistant United States Attorney

Certified to be a true and correct copy of the original Pamela J. Barton, trial court clerk by (illegible) J---Ross ?

EXHIBIT D (Copy of 28 USCS S.1446)

EXHIBIT E (Copy of 28 USCS ss.1447,1449)

EXHIBIT F

UNITED STATES DISTRICT COURT DISTRICT OF OREGON CIVIL MINUTES-GENERAL Case No. 86-A-335

854-RE Date July 21, 1986 Title DONALD TYLER MD v. HARTFORD INS. GROUP et al DOCKET ENTRY Record of order: GRANTING Hartford's motion for ext. of time to file appearance in this case. Appearance shall be filed within 30 days of the date of this minute order. Order setting status conference TUESDAY, SEPTEMBER 2, 1986 9:30 a.m. (in person status conference). PRESENT: HON. JAMES A. REDDEN, JUDGE M. Hartzell Deputy Clerk

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff vs. HARTFORD INSURANCE GROUP, et al., Defendants. Civil No. 86-854-RE

September 2, 1986 Portland, Oregon

TRANSCRIPT OF PROCEEDINGS BEFORE: The Honorable James A. Redden, Judge.

APPEARANCES: For the Plaintiff Donald E. Tyler, M.D., Pro se For the Government:

Ms Judith Kobbervig, Asst. United States Attorney For Defendant Roberts: Mr. Rick Kuhn Court Reporter: Jerry C. Harris

THE CLERK: For the record, this is the time set for status conference in Tyler versus Hartford Insurance Company, et al. Counsel identify yourselves for the record.

MS. KOBBERVIG: Judy Kobbervig for the Government, Your Honor

MR. KUHN: Rick Kuhn for Defendants Smith, Kelly, Ruland, Roan, Bockman, Foote and Vollack.

DR. TYLER: I am Donald Tyler, M.D., plaintiff.

THE COURT: The reason I asked for this status conference is because there are a great number of parties involved in the lawsuit. It is not just complex but certainly is a repetition of previous lawsuits or nearly so. I see most of the parties have opted out but I, nonetheless,

will set a schedule for all motions to dismiss and/or summary judgment motions, a time for responses. I think at this point all the motions have been filed. So the responses by the doctor will be due and then replies will be due, oral arguments will be scheduled. If the case survives the oral argument, at the time of oral argument I will set a schedule which will include the trial date.

MR. TYLER: Excuse me, Your Honor. I have a motion before the Court challenging the Court's jurisdiction. I submitted that motion.

THE COURT: I am treating that as one of the responses to the various motions that have been filed. It will be treated together with

DR. TYLER: I submit that when a motion is before the Court challenging the jurisdiction, that should take precedence.

THE COURT: Do you have any other response

you are going to file? Anything else you are going to file against the motions that have been submitted, or is that to be treated as your response to all motions to dismiss or for summary judgment? I can tell you sir, your chances of winning that are very slim indeed. I haven°t researched it yet, but it seems to me clearly I have jurisdiction.

DR. TYLER: Well, Your Honor, it would appear to me when I am challenging the jurisdiction of the Court

THE COURT: Let me resolve that. The motion is denied. Do you wish to file any responses?

DR. TYLER: You have denied the motion? Well, Your Honor, my next course would be to be in the appeals court.

THE COURT: Let me say this Doctor. Do you wish to file responses to the individual motions which have been filed against you? You have every right to do

that or you can rest on your overall motion to dismiss for lack of jurisdiction. I am trying to advise you your chance of succeeding on that at this level or in the Ninth Circuit Court of Appeals are skinny indeed. What I am recommending, I guess to you is that you take advantage of the opportunity to respond to the various motions for summary judgment and/or to dismiss and see whether you prevail on those. I am prepared to submit to you and will in fact submit to you a schedule in that regard. You will have until September 19, 1986 to file your responses to all of the motions to dismiss and summary judgments which have been filed. Replies will be due September 26, 1986. The oral argument will be October 16, 1986. October 16th is a Thursday. oral argument will be at 8:30 a.m. At that time, Doctor, I will listen to any argument you may have on the individual

motions filed against you and on the motion to dismiss, if that's what it is, your motion for my lack of jurisdiction in this case. They will all be ruled upon at the same time.

DR. TYLER: Do I understand you did not deny it at this time?

THE COURT: I have not made a ruling at this time. I have tried to point out to you you need not rely on that motion at this point. You can still respond to all the individual motions just in case you lose the one on jurisdiction. Motions such as that are pretty easy to lose in the Ninth Circuit. It appears to me just glancing at it, there is probably jurisdiction. So what I am trying to tell you is you ought to take advantage of this situation and the federal rules and respond to those motions to dismiss on summary judgment on the grounds other than jurisdiction if

such grounds there be. There is no sense in putting all your eggs in one basket. I will probably on the day of the argument or soon thereafter on all motions before me. Can either of the defendants present tell me or the plaintiff whether or not all motions have been filed? Have all the defendants filed something?

MR. KUHN: Your Honor, Rick Kuhn for Defendant Roberts. I Don't know whether all the parties have been served yet. And I don't know if everyone has appeared. I know there are a number of motions in the file. I haven't gone through those.

THE COURT: Have you served everyone?

DR. TYLER: I don't understand your question, Your Honor.

THE COURT: Have you told all these folks you are suing them: Have you served your complaint on them:

DR. TYLER: On all of the defendants listed, no, Your Honor, I have not.

THE COURT: When do you intend to do that?

DR. TYLER: Your Honor, at the present time I don't know where this case really is. As far as I'm concerned

THE COURT: It is in federal court.

DR. TYLER: As far as I'm concerned, it's never been removed. The United States is not a defendant. It is required in the petition that the defendants file a petition in the state court. That hasn't been done. So I am not going to serve any of these people to appear in the United States Court.

THE COURT: Have all of the people been served in your state court action before it was removed?

DR. TYLER: No, no, Your Honor, they haven't been.

MS KOBBERVIG: For the record, Your Honor, only one of the federal judges who were named was actually served and that was

Judge Finesilver. Three of the circuit judges were never actually served although I moved on behalf of all three for dismissal.

THE COURT: When was it filed in state court; do you remember?

MS. KOBBERVIG: The removal or the action?

THE COURT: The initial action.

MS KOBBERVIG: I do not have it in the removal petition.

MR. KUHN: It looks like sometime in June of '86, Your Honor.

DR. TYLER; Excuse me, the petition was filed July 3rd.

THE COURT: Pardon?

DR. TYLER: The petition was filed July 3rd according to the records here.

MS KOBBERVIG: That is the removal.

THE COURT: The initial action.

DR. TYLER: Oh.

THE COURT: When you filed it in

approximately June of '86, did you attempt to serve all the parties or just filed the action?

DR. TYLER: I did not attempt to serve all the parties.

THE COURT: Is it your intention to serve these people?

DR. TYLER: It was my intention at that time but not at this time.

THE COURT: What did you do in that regard. When you filed your lawsuit in state court, didn't you hire somebody to serve these people or just sort of filed it and waited?

DR. TYLER: Your honor, I don't understand what it is that you wish to understand.

THE COURT: You filed this case in state court; am I correct?

DR. TYLER: Yes, that's correct.

THE COURT: Against numerous defendants?

DR. TYLER: Yes that's correct.

THE COURT: Did you make any attempt or

make any arrangements or take any action at all to have those defendants served at that time for your case in state court?

DR. TYLER: I was in the process, Your Honor. I had served several of them.

THE COURT: Your agents or are you taking any action for any of those others to be served either in state or federal court at all?

DR. TYLER: Your Honor, I'm taking no action to serve any of them as long as the case is in this U.S. District Court if there is any question about where jurisdiction is.

THE COURT: All right. We will be in recess. (recess)

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter. September 4, 1986. (signed) JERRY C. HARRIS Official Court Reporter.

EXHIBIT H

THE CLERK: For the record, this is the time set for status conference in Tyler versus Hartford Insurance Company, et al. Counsel identify yourselves for the record.

MS. KOBBERVIG: Judy Kobbervig for the Government, Your Honor.

MR. KUHN: Rick Kuhn for Defendant Roberts. I thought there would be more people present today.

DR. TYLER: I am Donald Tyler, M.D., plaintiff.

THE COURT: The reason I asked for this status conference is because there are a great number of parties involved in the lawsuit. It is not just complex but certainly is a repetition of previous lawsuits or nearly so. I see most of the parties have opted out but I, nonetheless, will set a schedule for all motions to dismiss and/or summary judgment motions, a

time for responses. I think at this point all the motions have been filed. So the responses by the doctor will be due and then replies will be due, oral arguments will be scheduled. If the case survives the oral argument, at the time of oral argument I will set a schedule which will include the trial date.

MR. TYLER: Excuse me, Your Honor. I have a motion before the Court challenging the Court's jurisdiction. I submitted that motion.

THE COURT: I am treating that as one of the responses to the various motions that have been filed. It will be

EXHIBIT I

IN THE UNITED STATE DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, et al., Defendants. Case No. 86-854-RE

MOTION OF DEFENDANT HARTFORD INSURANCE FOR ATTORNEY FEES AND COSTS PURSUANT TO FRCP11

(Oral Argument Requested)

Defendant, Hartford Insurance Group, respectfully moves the court for an order awarding Hartford Insurance Group its attorney fees and costs incurred in responding to Plaintiff's complaints and motions before this court. In support of its motion, Defendant, Hartford Insurance Group, relies upon FRCP 11, the attached Memorandum of Law and its exhibits and the complete record of this action.

DATED this 3rd day of October, 1986.

YTURRI, ROSE, BURNHAM, EBERT & BENTZ

By (signed) Teresa J. Hutchens, OSB #86047

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

DONALD E. TYLER, M.D., Plaintiff, vs. HARTFORD INSURANCE GROUP, et al., Defendants. No. 86-854-RE, Portland, Oregon February 6, 1987

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE JAMES A REDDEN, Judge

APPEARANCES: For the Plaintiff: None, For the Defendants: Messrs. Kenneth E. Roberts, Martin W. Ja da, Thomas K. Elden, Walter Sweek, Ms. Teresa J. Hutchens, Judith Kobbervig. Court Reporter: Jerry C. Harris.

THE CLERK: We are trying to reach Dr. Tyler.

THE COURT: This is the case of Tyler versus Hartford Insurance Company, et al. Let the record show this is in response to the December 19, 1986 complaint of Dr. Tyler about the expense of traveling to Portland. We reset the hearing on motions to dismiss to Friday, February 6, 1987, at 9:00 o'clock a.m. All local counsel to appear in person, out-of-town counsel will be on a conference telephone call. We advised that we would initiate the conference call. We have called Dr.

Tyler's office in Ontario, Oregon and there was no answer and then there was a busy signal. We have not heard from him as to whether he would be on the phone or not. Why don't you try him once more and then we will proceed with or without him.

(Clerk dials number.)

THE COURT: The record should reflect that four attempts have been made to reach Dr. Tyler by phone pursuant to a notice sent out for the purpose of his appearance at this hearing; it was at his request and we agreed to allow him to appear by telephone rather than traveling to Portland. The matter before us, there are several motions by several defendants in this case. I intend to issue a written opinion. I will advise the parties present and by telephone in summary of my determination. First, let me ask counsel, those present, who you represent.

MR. ELDEN: This is Tom Elden, your Honor,

from the State of Oregon; I represent five former members of the Board of Medical Examiners, one of whom, for the record, is deceased. I have called that to Dr. Tyler's attention; he has left him in the case, as I recall. I am just trying to check through here and get the names.

THE COURT: I have the names. You have got Kostel, Ferrin, Reid, and Bobbitt.

MR. ELDEN: I thought there was fifth one, Judge. Let me just look. Kostol, Ferrin, Reid and Bobbitt; I guess that's it. I thought there was an additional one at some point.

THE COURT: In any event, they would all be members

MR. ELDEN: Former members. Actually, Mr. Bobbitt, in point of fact, I am not sure was actually a member of the board as such; he was an attorney working with the board back at that time. We didn't

address the claim on the basis of their role; we addressed it on the ground for dismissal.

THE COURT: Thank you. Others in the courtroom, identify yourselves and who your are representing.

MR. ROBERTS: Kenneth E. Roberts, representing Thomas 1. Roberts.

MS HUTCHENS: Teresa J. Hutchens, H-u-t-c-h-e-n-s, representing Hartford Insurance.

MS. KOBBERVIG: Judy Kobbervig, representing the three circuit and one district court judges; Judge Silverstein has never been served in this case.

MR. JAQUA: Martin Jaqua, representing Defendants Smith, Kelly, Bockman, Foote and, of course, all of the Colorado state judges, either trial or appellate judges. There is also some Colorado judges who have been named but not served. There is one who I believe is deceased.

MR. SWEEK: Walter Sweek. Your Honor, Fred

Roehr, my partner, represents Debbie Craig; he is in trial. I am standing in for him.

THE COURT: I have reviewed the filings such as they are from the parties. We met here in court with Dr. Tyler present, I believe, last October at which time I denied his motion to remand this case to state court and set a schedule for determination of all issues. I granted the doctor time to serve defendants not yet served if he chose to serve them. There has been no activity in the record since then. I will grant Defendant Roberts' motion to dismiss for lack of personal jurisdiction. I will grant Defendants Kostol, Ferrin, Reid and Bobbitt (state defendants) motion to dismiss; and if there is any other individuals who served on the board at that time included in the complaint and not mentioned, this order would cover that

individual as well. I grant the order to dismiss in its entirety because the claims against them are barred by the statute of limitations. In addition, the motion to dismiss is granted as to plaintiff's first claim for relief because plaintiff has failed to state a claim for interference with economic relationships. The motion to dismiss will be granted as to plaintiff's second claim for relief because plaintiff has failed to state a claim for intentional infliction of emotional distress. And the motion to dismiss will be granted as to plaintiff's third for relief because the claims of civil rights violations refer to events in Colorado and have no reference to the Oregon State defendants. Thirdly, I grant Hartford Insurance's motion to dismiss on the ground that it is barred by the applicable Oregon statute of limitations and because the Court lacks personal

jurisdiction over the defendant Hartford. In addition, the motion to dismiss is granted as to the first and third claims for relief because they fail to state a claim upon which relief can be granted as to this defendant. I do not think you need to reach Defendant Hartford's motion in the alternative to strike and make more definite and certain. Fourth, I grant Defendant Debbie Craig's motion to dismiss in its entirety based upon judicial immunity and plaintiff's failure to provide notice and file within the applicable statute of limitations. It is not necessary to reach this defendant°s motion in the alternative for an order requiring a more definite statement. Five, I grant defendants Johnson, Danforth, Silverstein, Steinberg, Tursi, Van Cise, Jackabusi (sic) and Ericksen°s (state judges and employees of the Colorado Judicial Department) motion to

withdraw appearance based on the fact that these defendants were never served with a summons, the original or amended complaint. Six, I grant defendants Smith, Kelly, Rulin, Rowen(sic) Bachman(sic), Foote and Vollack's (Colorado State judges) motion to dismiss for lack of personal jurisdiction, failure to comply with the tort claim notice requirement, failure to file within the applicable statute of limitations, and based on judicial immunity. Seven, I grant defendants Finesilver, Seth, McKay and Logan's (federal judges) motion for summary judgment based on judicial immunity. I dismiss as against those defendants who have not been served. Within this order I include the defendants who have filed motions to withdraw as well as those who have not. There is one other motion outstanding and that is Hartford's motion for sanctions. If you wish to

pursue that matter, you should again file a very brief motion drawing my attention to this earlier motion at which time I will set a hearing date which is necessary to impose sanction. Dr. Tyler needs to have the opportunity to be heard if you do intend to file a motion for sanctions. A detailed report of the attorney's time spent in federal court action should be included as a basis upon which I will base any sanction which I may or may not grant.

MR. ELDEN: Your Honor, this is Tom Elden. That is a clean sweep as to all of the defendants. Will Your Honor issue a judgment order of dismissal?

THE COURT: Yes.

MR. ELDEN: Thank you.

THE COURT: I will first issue an opinion. I don't know whether to issue a judgment or not. I will wait and see if there are any more motions for sanctions. We will

be in recess.

MR. ELDEN: Your Honor, you°re going to put this in writing and will we get a copy?

THE COURT: Yes. (CONCLUDED)

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter. February 13, 1987. (signed) JERRY C. HARRIS, Official Court Reporter.

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER,M.D., Plaintiff, vs HARTFORD INSURANCE GROUP, et al., Defendants. Case No. 86-854-RE MOTION OF DEFENDANT HARTFORD INSURANCE FOR ATTORNEYS FEES AND COSTS PURSUANT TO FRCP 11 (Oral Argument Requested)

Defendant, Hartford Insurance Group, respectfully moves the court for an order awarding Hartford Insurance Group its

attorneys fees and costs incurred in responding to Plaintiff's complaints and motions before this court. In support of its motion, Defendant, Hartford Insurance Group, relies upon FRCP 11, the Motion and Memorandum of Law in Support of its Motion previously submitted to the Court by Defendant Hartford Insurance Group requesting its attorney fees and costs pursuant to FRCP 11, the exhibits attached to that Memorandum of Law, the complete record of this action, and the attached Statement of Attorney Fees and Costs and Cost Bill. DATED this 11th day of February, 1987. YTURRI, ROSE, BURNHAM, EBERT & BENTZ By (signed) Teresa J. Hutchens, OSB #86047 Trial attorney: Carl Burnham, Jr. OSB #64008

(Pages 3-13 of this EXHIBIT K because of volume and diluted value are omitted. They are detailed billings for costs and for 55.5 hours of Teresa J. Hutchens, 4.8

hours of Carl Burnham, and 2.8 hours of "legal assistants" for Hartford, totaling costs of $1,126.41 and attorney fees in the amount of $3,850.00. The only itemized time related to the petitioner's motion to remand, his only motion in federal court, (complaint and amended complaint were filed in state court) was on 8-8-86 "Review Rule 12 motions of other defendants and memorandum of Tyler in support of motion to remand--0.5 hours" of Hutchens).

EXHIBIT L,

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip

F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. LaMora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., and Howard I. Bobbit, Defendants. Civil No. 86-854-RE

OPINION REDDEN, Judge:

Plaintiff, who is a physician and attorney, brought this action against Hartford Insurance Group and 39 individuals for tortious interference with business relations, outrageous conduct and violation of 42 U.S.C. s 1983. The individual defendants include members of the Colorado judiciary presiding in all

levels of both state and federal courts, members of the medical staff of the Brighton Community Hospital, members of the Colorado Medical Society, the Colorado State Medical Examiners, the attorneys who represented these individuals in prior suits brought by Dr. Tyler in Colorado, four members of the Oregon Board of Medical Examiners and others.

The case was initially filed in Malheur County, Oregon. The United States removed the case to federal court on July 3, 1986 on behalf of a federal judge who had been served, defendant Finesilver, and other federal officers and employees who had not been served. Plaintiff filed a motion to remand the case to state court on August 8, 1986.

I denied plaintiff's motion to remand on October 17, 1986, and ordered that plaintiff had until November 17, 1986 to serve any defendants he wished to serve.

I also set a briefing schedule and date for oral arguments on the pending motions to dismiss as well as any motions to dismiss that might be filed by newly served defendants.

A minute order issued December 19, 1986 advised all parties that the hearing would be held on February 6, 1987 at 9:00 a.m. Plaintiff indicated that personal appearances were difficult for him due to distances involved. All local counsel were ordered to appear in person but, as a convenience to the parties and plaintiff, out of town counsel were allowed to appear by conference telephone call initiated from my courtroom.

At the time of the hearing plaintiff, who has represented himself througnout the case, failed to appear in person and could not be reached by telephone. My courtroom deputy called plaintiff's office in Ontario, Oregon four times at the phone

number he provided but was unable to reach him. Plaintiff did not contact the court before, during or after that date.

I ruled on the seven (7) motions before me granting the various defendants° motions as discussed below.

Defendant Roberts' Motion to Dismiss

Mr. Roberts is a Colorado attorney who was defense counsel in two cases brought by plaintiff in Colorado. Plaintiff's cases all stem from the failure to renew his hospital privileges at the Brighton Community Hospital in Brighton, Colorado approximately twelve years ago. Plaintiff has alleged in the instant action that Mr. Roberts acted pursuant to a conspiracy by supplying the Colorado Board of Medical Examiners deceitful, false information concerning plaintiff. Mr. Roberts moves to dismiss the claims against him on the ground that the court lacks jurisdiction over him. I grant the motion for lack of

personal jurisdiction pursuant to Rule 4 of the Oregon Rules of Civil Procedure.

State Defendants' Rule 12 Motion to Dismiss The state defendants are Carl Kostol, Allan Ferrin, David Reid and Howard Bobbitt. They were members of the Oregon Board of Medical Examiners. The claim against these defendants has to do with letters that plaintiff wrote to the Board in 1986 inquiring about letters dated September and October 1965 that were addressed to plaintiff. The substance of the letters had to do with plaintiff's application for reinstatement of his medical license to active status. The state defendants move to dismiss on the basis that any claims plaintiff has which stem from the 1965 letters are time barred. O.R.S. 30.275(8) provides that an action arising from any act or omission of a public body or an officer, employe (sic) or agent of a public body shall be

commenced within two years after the alleged loss or injury. I grant the state defendants' motion to dismiss in its entirety because the claims against them are barred by the statute of limitations. In addition, the motion is granted as to plaintiff's first claim for relief because plaintiff has failed to state a claim for interference with economic relationships and to plaintiff's second claim for relief because plaintiff has failed to state a claim for intentional infliction of emotional distress. Moreover, the motion is granted as to plaintiff's third claim for relief because the claims of civil rights violations refer to events in Colorado and have no reference to the Oregon state defendants.

Defendant Hartford Insurance's Motion to Dismiss, Strike and Make More Definite and Certain Defendant Hartford was plaintiff's malpractice insurance carrier

in Colorado. Plaintiff's professional conduct as a physician was apparently questioned and reviewed by a hospital review committee at Brighton Community Hospital. Plaintiff reportedly refused to cooperate with these reviews and consequently his liability insurance coverage was cancelled. Defendant Hartford moves for dismissal on four alternative theories and also moves to strike or make more definite and certain. I need not reach the motions to strike and make more definite and certain and grant the motion to dismiss on the following grounds. First, personal jurisdiction is lacking under Rule 4 of the Oregon Rules of Civil Procedure. Defendant Hartford has had no contact with Oregon which is relevant to the cause of action. Second, the complaint is barred by the statute of limitations. O.R.S. 12.110(1), O.R.S. 659.045(1) and O.R.S. 12.115(1). Third,

the motion to dismiss is granted as to the first and third claims for relief because they fail to state a claim upon which relief can be granted as to this defendant.

Defendant Debbie Freepons Craig's Motion to Dismiss or Make More Definite and Certain Ms. Craig was law clerk to Judge Ruland of the Colorado Court of Appeals. All claims brought against her in this case arise out of actions which allegedly occurred by virtue of this employment. I grant Ms. Craig's motion to dismiss in its entirety based upon judicial immunity and plaintiff's failure to provide notice and file within the applicable statute of limitations. It is not necessary for me to reach this defendant's motion in the alternative for an order requiring a more definite statement.

Defendants Johnson, Danforth, Silverstein, Steinberg, Tursi, Van Cise, Jacobucci and

Ericksen's Motion to Withdraw Appearance

These defendants were not served with any summons or pleading. Attorneys for these defendants were retained to represent judges and other current and former employees of the Colorado Judicial department. The attorneys submitted a motion to dismiss on behalf of all of their clients when the case was still in state court. They then learned that the case had been removed to federal court and moved for an extension of time within which to respond to the amended complaint which had just been filed. They indicate that they were uncertain at that time which defendants had actually been served with the amended complaint. The defendants who now move to withdraw appearance have never been served with a summons, original complaint or amended complaint. Defendant Jean Jacobucci is deceased. I grant the motion to withdraw

as to these defendants. Plaintiff was served with the motion to withdraw on August 4, 1986, and still has not served these defendants. I find the defendants should not be considered to have waived their defense of insufficiency of service of summons and grant the motion to withdraw their prior appearance.

Defendants Smith, Kelly, Ruland, Roan, Bockman, Foote and Vollack's Motion to Dismiss These defendants are all Colorado state judges. They move for dismissal for lack of personal jurisdiction, failure to comply with the tort claim notice requirement, judicial immunity and failure to file within the applicable statute of limitations.

I find that personal jurisdiction is not conferred by any of the provisions of Rule 4 of the Oregon Rules of Civil Procedure as to these defendants. Moreover, plaintiff has not alleged compliance with

the notice provisions of the Colorado Governmental Immunity Act. I grant dismissal on this ground as to plaintiff's first and second claims for relief. Dismissal is also granted on the ground that these defendants have a right to immunity from civil suit. The defendants' acts occurred as judicial officers of the State of Colorado and the defendants were hearing matters within their jurisdiction. The motion to dismiss is also granted because the action has not been brought within the applicable statute of limitations. Dr. Tyler alleges that he has been damaged as a result of a conspiracy beginning in 1974 and the claim was commenced in 1986. it is barred by Oregon, Colorado and federal statutes of limitations, whichever is applicable.

The motion to dismiss as to these defendants is granted in its entirety. Defendant Federal Judges Finesilver, Seth,

McKay, and Logan's Motion for Summary Judgment Judge Finesilver is a federal district court judge and the other three named defendants here are appellate judges from the Tenth Circuit. Dr. Tyler claims these four judges illegally deprived him of his rights in an earlier case litigated in the Tenth Circuit. The judges invoke the doctrine of judicial immunity to support their motion for summary judgment. The judges were exercising their proper jurisdictional authority when ruling on plaintiff's case and are therefore immune from civil suit for damages. Judges are immune from civil liability unless their actions are "in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 356-7 (1978). These judges meet the Stump standard by showing that they performed acts which they normally perform while in their capacity as United States District and Circuit Judges. Id.,

at 362. I grant the federal judges' motion for summary judgment based on judicial immunity.

Conclusion

I grant all of the defendants' motions to dismiss and for summary judgment as discussed above. In addition, I dismiss this action as against those defendants who have not been served. Within this order I include the defendants who have filed motions to withdraw as well as those who have not. This action is dismissed accordingly.

Dated this 4 day of March, 1987.

(signed) James A. Redden

United States District Judge

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON, DONALD E. TYLER,M.D., Plaintiff v. HARTFORD INSURANCE GROUP, Sherman G.Finesilver, Oliver Seth, Monroe G. McKay, James K.

Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. VanCise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. La Mora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., and Howard I. Bobbitt, Defendants. Civil No. 86-854-RE

ORDER REDDEN, Judge: IT IS ORDERED THAT: 1) Defendant Roberts' Motion to Dismiss is GRANTED; 2) Defendants Kostol, Ferrin, Reid and Bobbitt's Motion to dismiss is GRANTED; 3) Defendant Hartford Insurance's

Motion to Dismiss is GRANTED; 4) Defendant Debbie Freepons Craig's Motion to Dismiss is GRANTED; 5) Defendants Johnson, Danford, Silverstein, Tursi, Van Cise, Jacobucci and Ericksen's Motion to Withdraw Appearance is GRANTED; 6) Defendants Smith, Kelly, Ruland, Roan, Bockman, Foote and Vollack's Motion to Dismiss is GRANTED; and, 7) Defendants Finesilver, Seth, McKay and Logan's Motion for Summary Judgment is GRANTED.

IT IS ALSO ORDERED that this action is DISMISSED. IT IS FURTHER ORDERED that this action is DISMISSED as against those Defendants who have not been served.

Dated this 4 day of March, 1987.

(signed) James A. Redden

United States District Judge

EXHIBIT N

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D. Plaintiff, v. HARTFORD INSURANCE

GROUP, et al., Defendants. Civil No. 86-854-RE JUDGMENT

Based on the record. IT IS ORDERED that plaintiff take nothing and the action is dismissed on the merits. Dated this 9 day of March, 1987.

(signed--illegible) Clerk, United States District Court

EXHIBIT O

(This is a copy of 28 USCS s. 1442.)

EXHIBIT P

DEPARTMENT OF JUSTICE, TRIAL DIVISION, Justice Building, Salem, Oregon 97310, March 16, 1987

The Honorable Francisco J. Yraguen
Circuit Court Judge, Malheur County
Courthouse, Drawer L, Vale, Oregon 97918

Re: Tyler v. Hartford Malheur County Circuit Court Case No. 86-06-20969-L

Dear Judge Yraguen:

On March 9, 1987, a judgment was entered in the above entitled case that

had been removed to federal district court (Civil No. 86-854-RE) ordering the plaintiff take nothing and the action be dismissed on its merits. I assume that the court will do whatever is necessary to close out the file in Malheur County inasmuch as the matter having been removed and dismissed, there would be nothing left to accomplish in Malheur County. If the court wishes any of the counsel to draft any sort of order, please let us know. Sincerely, (signed) Thomas K. Elden Assistant Attorney General (Certified to be a true and correct copy of the original Pamela J. Barton, trial court clerk by (signed Evelyn Sword) 4-6-87

EXHIBIT Q

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR DONALD E. TYLER, M.D., Plaintiff, vs. HARTFORD INSURANCE GROUP, et al., Defendants. Case No. 86-06-20969-L

ORDER OF DISMISSAL

The above-entitled matter having come before the Court upon receipt of a letter from Thomas K. Elden, Assistant Attorney General, dated March 16th, 1987, indicating that on March 9th, 1987, a judgment was entered in the above-entitled case in Federal District Court, Civil No. 86-854-RE, ordering that the Plaintiff take nothing and tne action be dismissed on its merits, and it appearing to the Court that the above-entitled case should be dismissed based on such judgment being entered in the Federal District Court; and the Court being fully advised in the premises NOW, THEREFORE IT IS HEREBY ORDERED that the above-entitled matter be, and it is hereby, dismissed. DONE AND DATED this 22nd day of March, 1987 (signed) F.J. Yraguen CIRCUIT JUDGE (certified to be a true and correct copy of the original Pamela J. Barton, trial

court clerk by (signed) Evelyn Sword)

EXHIBIT R

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. La Mora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E.

Reid, D.O., and Howard I. Bobbitt, Defendants. Civil No. 86-854-RE OPINION Donald E. Tyler, M.D., 1092 S.W. 2nd Avenue, Ontario, Oregon 97914 Plaintiff pro se. Teresa J. Hutchens, Yturri, Rose, Burnham, Ebert & Bentz, P.O. Box S, 89 S.W. Third Avenue, Ontario, Oregon 97914, Attorneys for Defendant Hartford Insurance REDDEN, Judge:

Plaintiff, who is a physician and an attorney, brought this action against Hartford Insurance Group and 39 individuals for tortious interference with business relations, outrageous conduct and violation of 42 U.S.C. s.1983. The individual defendants include members of the Colorado judiciary presiding in all levels of both state and federal courts, members of the Colorado Medical Society, the Colorado State Medical Examiners, the attorneys who represented these individuals in prior suits brought by Dr.

Tyler in Colorado, four members of the Oregon Board of Medical Examiners and others. It is plaintiff's contention that the defendants conspired over the last 20 years to interfere with his practice of medicine and to frustrate his efforts to seek recourse in the Colorado courts.

The case was initially filed in state court but removed to federal court on July 3, 1986. Plaintiff's motion for remand was denied on October 17, 1986, and at that time I advised plaintiff he would have until November 17, 1986 to serve any defendants he wished to bring into this action. I also set a briefing schedule and date for oral arguments on the already numerous pending motions to dismiss as well as any motions to dismiss that might be filed by newly served defendants. A hearing on the motions to dismiss was held on February 6, 1987. All local counsel were ordered to appear in person but, as a

convenience to the parties and plaintiff, out of town counsel and plaintiff were allowed to appear by telephone conference call initiated from the courtroom. At the time of the hearing, plaintiff, who has represented himself throughout the case, failed to appear in person and could not be reached by telephone. After several attempts to reach plaintiff at the phone number provided by him, I proceeded. I granted all of the defendants' motions to dismiss and for summary judgment. In addition, I dismissed the action as against those defendants who had not been served. See Opinion dated March 4, 1987. Those rulings were the obvious result of the motions filed, and plaintiff's appearance, or lack thereof, did not affect the outcome. Prior to the hearing on the motions to dismiss and for summary judgment, Hartford Insurance had filed a motion for attorney's fees and costs

pursuant to Fed.R.Civ.P. 11. I determined that I would postpone ruling on the motion until after the hearing and set a time for argument on the motion for March 26, 1987. The motion was originally filed on October 14, 986, and a Statement of Costs and Disbursements was filed on February 17, 1987. No response has been filed by plaintiff to the motion or to the statement of costs.

STANDARD FED.R.CIV.P. 11 provides in pertinent part:

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record. . . A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his

knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court . . . shall impose upon the person who signed it . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The Ninth Circuit has held that subjective bad faith is not an element to be proved under Rule 11. Zaldivar v. City

of Los Angeles, 780 F.2d 823, 829 (9th Cir. 1986). The standard is one of reasonableness and the "reasonable man" against which conduct is tested is a competent attorney admitted to practice before the district court. Id. at 830. The Ninth Circuit holds that sanctions shall be assessed if the paper filed in district court and signed by an attorney or an unrepresented party is frivolous, legally unreasonable, or without factual foundation, even though the paper was not filed in subjective bad faith. Id. at 831.

DISCUSSION The basis of defendant Hartford's motion for sanctions is that the complaint and motions filed by plaintiff in this action have been legally unreasonable and without factual foundation. This argument stems from the fact that plaintiff has brought virtually identical suits containing the same

allegations and regarding the same series of events numerous times in Colorado. In one of those suits, filed in United States District Court for the District of Colorado, the court noted with particularity the insufficiency of plaintiff's claim and the inadequacy of his pleading. Defendant has provided transcripts of proceedings in which plaintiff was warned that his redundant, immaterial, insufficient, and inarticulate pleading would not be tolerated. Judge Finesilver ultimately dismissed the matter and contained within his order of dismissal was the following. "The Complaint herein was virtually unintelligible and did not adequately advise defendants of the nature of the charges against them nor provide them with information sufficient to enable them to draft a responsive pleading . . . (The Court) gave the plaintiff an opportunity

to replead by filing an amended complaint which would meet the standards of FRCP 8(a). The Plaintiff has elected not to take advantage of this opportunity." Judge Finesilver's Order of Dismissal dated May 25, 1982 at p. 2.

Defendant contends that plaintiff has failed to heed the reprimands and warnings that resulted in the dismissal of the prior action and has once again brought suit against this defendant in a manner that does not comply with Fed.R.Civ.P. 8(a). The complaint in the instant action is also virtually unintelligible and contains claims and allegations virtually identical to those that were dismissed and stricken in the previous actions. The action is based on the same series of factual events which formed the basis of the prior lawsuits. The allegations contained in this complaint are, as were they in the prior lawsuits, barred by

applicable statutes of limitations as I noted in my Order of February 6, 1987. Plaintiff has again made a claim pursuant to 42 U.S.C. s.1983 without alleging facts indicating that the defendant acted under color of law. And, similar to past lawsuits, plaintiff's complaint and filings include references to unidentified parties, unnamed defendants, unrelated lawsuits and unanswered letters. Moreover, plaintiff continues to include disparaging remarks about the defendants and their counsel. While it is true that plaintiff is acting pro se, pro se plaintiffs are subject to sanctions imposed under Fed.R.Civ.P. 11. Here, the pro se plaintiff is an attorney. I find that plaintiff's pursuit of this lawsuit was and is legally unreasonable and that this lawsuit is without factual foundation. Further proof of the unreasonableness of plaintiff's conduct is

the fact that in virtually identical prior proceedings he has been advised of the insufficiency of his claims and pleading. He has been admonished as to pleading requirements contained within Fed.R.Civ.P. 8 and yet continues to file documents which are unintelligible. The fact that these filings force the defendant to once again appear and defend itself against meritless claims which are inarticulately framed supports the motion for sanctions. The costs to defendant of defending itself are awarded pursuant to Fed.R.Civ.P. 11.

CONCLUSION For the reasons stated, I grant defendant Hartford's motion for sanctions. Defendant is entitled to reasonable expenses, including attorney's fees. I find the defendant's statement of costs and disbursements to be reasonable and order plaintiff to pay attorney's fees and costs in the total amount of $4,976.41 ($1,126.41 in costs and $3,850.00 in

attorney's fees). Dated this 31 day of March, 1987. (signed) James A. Redden United States District Judge

EXHIBIT S

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., V. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M.Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. LaMora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy,

Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., and Howard I. Bobbit, Defendants. Civil No. 86-854-RE ORDER REDDEN, Judge: IT IS ORDERED that Defendant Hartford Insurance's Motion for Sanctions pursuant to Fed.R.Civ.P. 11 is GRANTED. Plaintiff is ordered to pay defendant's reasonable costs and attorney's fees in the total amount of $4,976.41. IT IS SO ORDERED. Dated this 31 day of March, 1987. (signed) James A. Redden United States District Judge

EXHIBIT T

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, et al., Defendants. Civil No. 86-854-RE JUDGMENT

IT IS ORDERED that defendant Hartford Insurance Group recover the sum of $4,976.41 from plaintiff Donald E. Tyler, M.D., for costs and attorney fees. Dated

this day of April, 1987

(copy--not signed) Robert M. Christ, Clerk, United States District Court

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR

DONALD E. TYLER, M.D., Plaintiff, vs HARTFORD INSURANCE GROUP, et al, Defendants. Circuit Court Case No. 87-04-21566M U S District Court District of Oregon Case No. 86-854-RE NOTICE OF FILING FOREIGN JUDGMENT

To: Donald E. Tyler, M.D., 1092 SW 2nd Avenue, Ontario, OR 97914

YOU SHALL TAKE NOTICE that on the 24th of April, 1987, the following Judgment, a copy of which is attached hereto marked Exhibit "A" and made a part hereof, was filed in the office of the Clerk of the Circuit Court of the State of Oregon for the County of Malheur: IT IS ORDERED that defendants Hartford Insurance Group recover the sum of $4,976.41 from

plaintiff Donald E. Tyler, M.D., for costs and attorney fees. Notice is further given of the following information: Name and Address of Judgment Creditor: HARTFORD INSURANCE GROUP, P O Box 8265, Boise, ID 83707 Name and Address of Judgment Creditor's Lawyers: YTURRI, ROSE, BURNHAM, EBERT & BENTZ, P.O. Box S, Ontario, OR 97914 Clerk of the Circuit Court By (signed--illegible) (Certified to be a true and correct copy of the original Pamela J. Barton, trial court clerk by (signed--illegible)

DISMISSAL IN STATE COURT BY JUDGE JACKSON

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR Case No. 87-04-21572L DONALD E. TYLER, M.D. Plaintiff, vs. HARTFORD INSURANCE GROUP, et al. Defendants.

ORDER ALLOWING MOTIONS TO DISMISS

Various pending motions referred to individually hereinafter came on for

hearing on July 24, 1987 before the court.

*** 3. We turn next to the various Motions of the several Defendants to dismiss for failure to state a claim or cause of action. The Plaintiff, representing himself, has filed a 92 page complaint, together with exhibits attached of about twice that many additional pages. It is obviously another attempt in a series of lawsuits to obtain redress for real or imagined damages arising out of a series of incidents in Colorado, not Oregon. Plaintiff's complaint, including its exhibits by its own allegations reveals that it is an attempt to relitigate a matter commenced in the Circuit Court of the State of Oregon for Malheur County on July 7, 1986 as case numbers 86-06-20969 L (See Exhibit "A" to Plaintiff's complaint). The case was removed to Federal Court. (See Exhibit "B" to Plaintiff's complaint). Judge Redden

issued his opinion on March 31, 1987. (See Exhibit "R" to Plaintiff's complaint). Plaintiff herein was ordered to pay Defendant Hartford's attorney fees and costs in the sum of $4,976.41. (See Exhibit "T" to Plaintiff's complaint).

There was no appeal.

This lawsuit is no different from the last, except that Plaintiff now attempts to involve the attorneys for the Defendants previously sued by claiming they are part of the alleged conspiracy he claimed in his original lawsuit.

In the Court's opinion, adding different Defendants and claiming a conspiracy in removing the case from State to Federal Court does not change the basic underlying claim which has already been determined and is therefore res judicata and Plaintiff is collaterally estopped from raising the same issues in this litigation. (emphasis added)

Under different circumstances, the Court could go along with Plaintiff's argument that claiming res judicata would be an affirmative defense, but here the Plaintiff has himself pled the fact that the case was previously decided in Federal Court.

It is obvious that Plaintiff has no cause of action against the Defendants, or any of them, in spite of 92 pages of incomprehensible claims and faulty conclusions.

All of Defendants' Motions to Dismiss for failure to state a cause of action should be and hereby are ALLOWED.

*** In as much as it appears that to allow the Plaintiff leave to amend would serve no useful purpose, leave to amend is DENIED. Defendants are allowed costs and disbursements.

DATED this 30th day of July, 1987.

(signed) WILLIAM L. JACKSON Circuit Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR

REGISTER OF ACTIONS --CIVIL

Case # 86-06-20969-L

Plaintiff: Donald E. Tyler, M.D.

Defendants: Hartford Ins. Co., et al.

Month/day/year	Papers filed	
6/3/86	**1**	**Complaint**
6/11/86	2	Summons - Carl R. Kostol M.D.
	3	6/8/86
6/23/86	4	Summons returned 6/13/86
	5	Carl Kostol, M.D.
6/24/86	6	Sheriff's return of
	7	Summons on Hartford Ins
	8	Group. 6/4/86
7/7/86	**9**	**Amended Complaint**
7/9/86	10	Notice of filing of
	11	Petition For Removal
7/9/86	12	AFF. of Michael Miller
7/9/86	13	Motion to Quash Service
	14	and dismiss Plaintiff's
	15	Amended Complaint

CONSTITUTIONS, STATUTES, RULES

U.S. CONSTITUTION

Amendment I. Congress shall make no law *** abridging the freedom of speech, or of the press; or the right *** to petition the Government for a redress of grievances.

Amendment V. No person shall be held *** , nor be deprived of live, liberty, or property without due process of law; ***.

Amendment VII. In suits at common law *** the right of trial by jury shall be preserved, and no fact *** shall otherwise be re-examined in any Court of the United States, than according to the rules of the common law.

OREGON CONSTITUTION Art. I

§ 10. No court shall be secret, but justice shall be administered, openly and without purchase ***.

§ 16. *** but all penalties shall be proportioned to the offense. In all

criminal cases whatever, the jury shall have the right to determine the law, and the facts ***.

§ 17. In all civil cases the right of Trial by Jury shall remain inviolate.

FEDERAL STATUTES

18 USC §1621. Whoever (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) *** ; is guilty of perjury and shall, *** , be fined not more than $2,000 or imprisoned not more than five years, or both. ***.

18 USC §371. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both. ***.

18 USC §241. If two or more persons conspire to injure, oppress, threaten, or initimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution of laws of the United States, or because of his having so exercised the same; or *** -- They shall be fined not more that $10,000 or imprisoned not more than ten years, or both; ***.

28 USC §144 Whenever a party to any proceeding in a district court makes and

files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, ***.

28 USC §455 (a) Any justice, judge, magistrate, or referee in bankrubpcy of the United States shall disqualify himself in any prpceeding in which his impartiality might reasonably questioned.

28 USC §2283 A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 USC §1912 Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion

may adjudge to the prevailing party just damages for his delay, and single or double costs.

28 USC § 1446 (a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, ***.

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

28 USC § 1447 Procedure after removal generally (a) In any case removed from a State court, the district court may issue

all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise. (b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court. *****

FEDERAL RULES OF CIVIL PROCEDURE

Rule 7. (a) Pleadings. There shall be a complaint and an answer; ***.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise

specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be

stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including as reasonable attorney's fee.

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 38. If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

OREGON STATUTES

ORS 9.460 Duties of attorneys. An attorney shall: ***(3) Counsel or maintain

such actions, suits or proceedings or defenses only as may appear to the attorney legal and just, except the defense of a person charged with a public offense; (4) Employ, for the purpose of maintaining the causes confided to the attorney, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of law or fact; (5) ***; (6) Abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which the attorney is charged; ***.

ORS 161.450 "Conspiracy" described. (1) A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or

more persons to engage in or cause the performance of such conduct. (2) Criminal conspiracy is a: (a) Class A felony if an object of the conspiracy is commission of murder, treason or a Class A felony. (b) Class B felony is an object of the conspiracy is commission of a Class B felony. (c) Class C felony if an object of the conspiracy is commission of a Class C felony. (d) Class A misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor.

ORS 162.065 Perjury. (1) A person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false. (2) Perjury is a Class C felony.

ORS 162.085 Unsworn falsification. (1) A person commits the crime of unsworn falsification if the person knowingly makes any false written statement to a public servant in connection with an

application for any benefit. (2) Unsworn falsification is a Class B misdemeanor.

ORS 162.235 Obstructing governmental or judicial administration. (1) A person commits the crime of obstructing governmental or judicial administration if the person intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle. ***.(3) Obstructing governmental or judicial administration is a Class A Misdemeanor.

ORS 162.305 Tampering with public records. (1) A person commits the crime of tampering with public records if, without lawful authority, the person knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record. (2) Tampering with public records is a Class A misdemeanor.

RACKETEERING

ORS 166.715 Definitions for ORS 166.715 to 166.735. As used in ORS 161.705 and 166.715 to 166.735, unless the context requires otherwise: ***

(2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(3) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are

not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering conduct.

(4) "Person" means any individual or entity capable of holding a legal or beneficial interest in real or personal property.

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct which constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes: ***,

(B) ORS 162.015, 162.025 and 162.065 to 162.085 relating to bribery and perjury;

(C) ORS 162.235, 162.265 to 162.305, 162.235, 162.335, 162.355 and 162.365,

relating to obstructing governmental administration.

(D) ORS 162.405 to 162.425, relating to abuse of public office; ***.

ORS 166.720 Racketeering activity unlawful; penalties. (1) It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise. (2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or

control of any real property or enterprise. (3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt. (4) It is unlawful for any person to conspire or to endeavor to violate any of the provisions of subsections (1), (2) or (3) of this section. (5)(a) Any person convicted of engaging in activity in violation of the provisions of subsections (1) to (4) of this section is guilty of a Class A felony. ***** .

ORS 166.725 Remedies for violation of ORS 166.720; time limitation. ***** (7)(a) Any person who is injured by reason of any violation of the provisions of ORS 177.720 (1) to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive

damages. Such person shall also recover attorney fees in the trial and appellate courts and costs of investigation and litigation, reasonably incurred.

(b) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this section.

OREGON RULES OF CIVIL PROCEDURE

Summons Rule 7

***** D. Manner of service.

D.(1) *** Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant authorized to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; office service by leaving with a person who is apparently in charge of an office; service by mail; or, service by publication. *****.

RESPONSIVE PLEADINGS RULE 19

***** **B. Affirmative defenses.**

In a pleading to a preceding pleading, a party shall set forth affirmatively *** estoppel, *** res judicata *** and any other matter constituting an avoidance or affirmative defense. ***.

RULE 23

A. Amendments. A pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served ***. Otherwise a party may amend the pleading only by leave of the court or by written consent of the adverse party; ***. D. *** When any pleading is amended before trial *** it shall be done by filing a new pleading, to be called the amended pleading, ***.

Submitted by: Donald E. Tyler, M.D.,
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